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The Diplomatic and Official Papers of Daniel Webster, While ...

Daniel Webster, United States. Dept. of State

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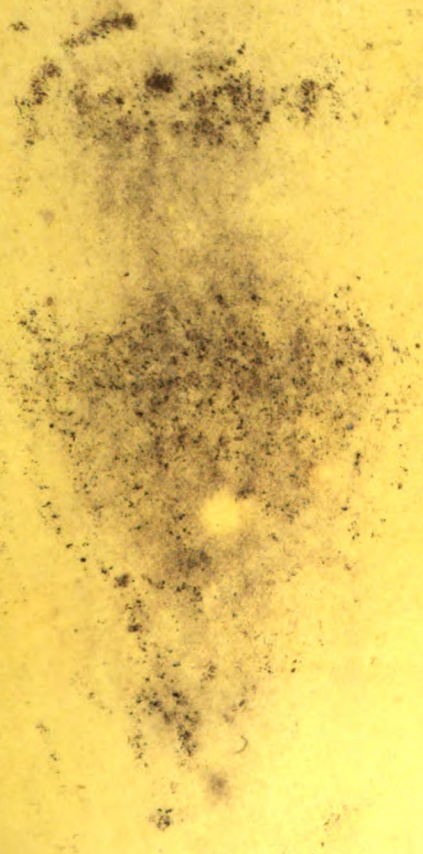

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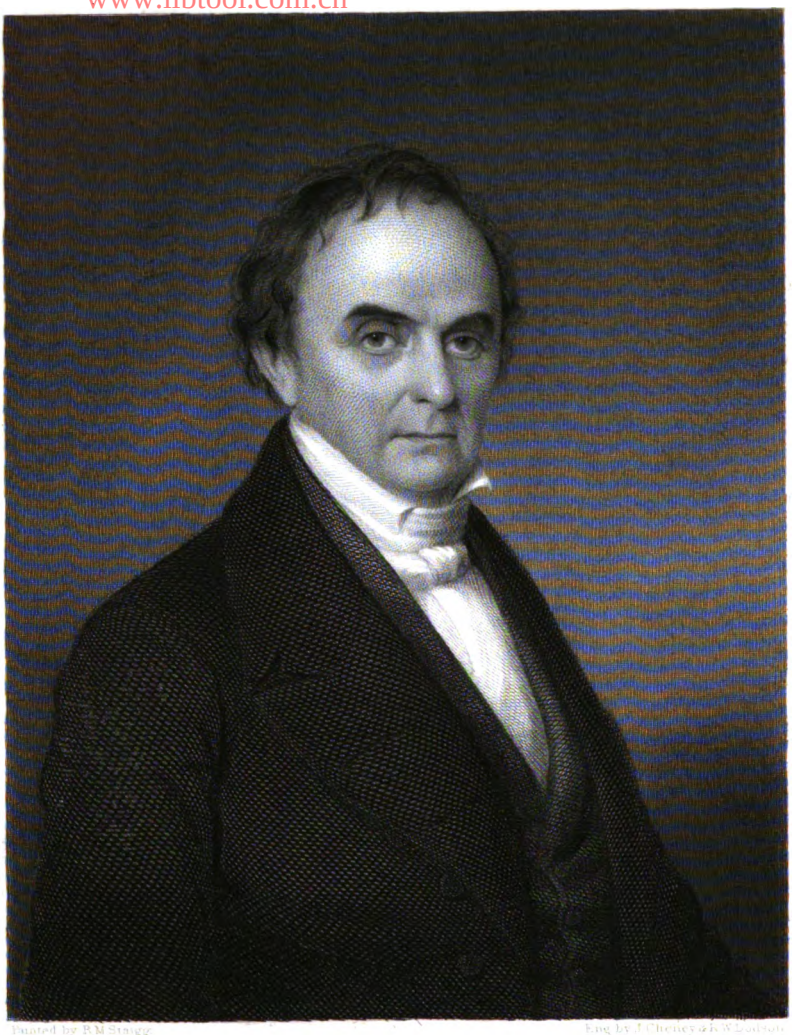

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THE

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DIPLOMATIC AND OFFICIAL

PAPERS

OF

DANIEL WEBSTER,

While Secretary of State.

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INTRODUCTION.

The condition of affairs in the United States, on the accession of President Harrison to office in the spring of 1841, was difficult and critical, especially as far as the foreign relations of the country were concerned. Ancient and modern controversies with England existed, which seemed to defy adjustment. The great question of the northeastern boundary had been the subject of negotiation almost ever since the peace of 1783. Every effort to settle it had but increased the difficulties with which it was beset, by exhausting the expedients of diplomacy. The Oregon question was rapidly assuming a formidable aspect, as emigrants began to move into the country in dispute. Not less serious was the state of affairs on the southwestern frontier, where, although a collision with Mexico might not in itself be an event to be viewed with great anxiety, it was a matter of course, as things then stood, that it would have brought a war with Great Britain in its train.

To the uneasiness necessarily growing out of these boundary questions, no little bitterness was added by more recent occurrences. The interruption of our vessels on the coast of Africa was a frequently-recurring source of irritation. Great cause of complaint was sometimes given by boarding officers, acting on frivolous pretenses or in a vexatious manner. At other times the public feeling in the United States was excited by the exaggerations and misstatements of unworthy American citizens, abusing the flag of the country to cover a detestable traffic which is made a capital felony by its laws. The affair of the "Caroline," followed by the arrest of M'Leod, created a degree of discontent on both sides, which discussion had done nothing to remove, but much to exasperate. A crisis had arisen, which the minister of the United States in London (Mr. Stevenson) deemed so serious, as to make it his duty to communicate

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with the commander of the American squadron in the Mediterranean, on the assumption of the immediate danger of war.*

Such was the state of things when General Harrison acceded to the Presidency, after an election more strenuously contested than any former political struggle, and by a larger popular vote than had ever before been given in the United States. As soon as the result of the election was known, he addressed a letter to Mr. Webster, offering him any place he might choose in his cabinet, and asking his advice as to the other members of which it should be composed. The wants and wishes of the country in reference to currency and finance having brought about the revolution which placed General Harrison in the chair, he was rather desirous that the Department of the Treasury should be assumed by Mr. Webster, who had studied those subjects profoundly, and whose opinions were in full concurrence with his own. Averse to the daily drudgery of the Treasury, Mr. Webster gave his preference to the Department of State, without concealing from himself that it might be the post of greater care and responsibility. In this anticipation he was not disappointed. Although the whole of the danger did not at once appear, it was evident from the outset that the moment was extremely critical.† Still, however, the circumstances under which General Harrison was elected were such as to give to his administration a moral power and a freedom of action, as to pre-existing controversies, favorable to their settlement on honorable terms.

But the providential dispensation which called the new President from his high position when just entering upon the discharge of its duties, changed the state of affairs in this respect. The great national party which had called him to the helm was struck with astonishment. No rallying point presented itself. A position of things existed, not overlooked, indeed, by the sagacious men who framed the Constitution, but which, from its very nature, can never enter practically into the calculations of the enthusiastic multitudes by which, in times of difficulty and excitement, a favorite candidate is borne to the chair. How much of the control which it would otherwise have possessed

* Senate Papers, 27th Congress, 1st session, No. 33.
† Mr. Webster's speech at Faneuil Hall, 30th September, 1842.

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over public opinion could be retained by an administration thus unexpectedly deprived of its head, was a question which time alone could settle. Happily, as far as our foreign relations were concerned, a character had been assumed by the administration, from the very formation of General Harrison's cabinet, which was steadily maintained, till it had effected the adjustment of the most difficult points in controversy, by the Treaty of Washington. President Harrison, as is well known, lived but one month after his inauguration. The greater part of the papers contained in the present volume were written during the first two years of Mr. Tyler's administration. With him, of course, rested the general authority of regulating and directing the negotiations with foreign powers, in which the government might be engaged. The active management of these negotiations was in the hands of the Secretary of State, and it is believed that no difference of views in regard to the important matters treated in these papers existed between him and Mr. Tyler. For the result of the principal negotiation, Mr. Tyler manifested great anxiety; and Mr. Webster has not failed to bear witness, in public and private, to the intelligent and earnest attention which was bestowed by him on the proceedings, through all their stages, and to express his sense of the confidence reposed in him by the head of the administration, from the beginning to the end of the transactions.

If the position of things was difficult here, it was not less so on the other side of the Atlantic; indeed, many of the causes of embarrassment were common to the two countries. There, as here, the correspondence, whether conducted at Washington or London, had of late years done nothing to advance the great questions at issue toward an amicable settlement. It had degenerated into an exercise of diplomatic logic, with the effect, in England as well as in America, of strengthening each party in the belief of his own rights, and of working up the public mind to a reluctant feeling that the time was at hand when those rights must be maintained by force. That the British and American governments, during a considerable part of the administrations of General Jackson and Mr. Van Buren, should, with the fate of the reference to the King of the Netherlands before their eyes, have exerted themselves with melancholy ingenuity in arranging the impossible details of another conven-

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tion of exploration and arbitration, shows of itself that neither party had any real hope of actually settling the controversy, but that both were willing to unite in a decent pretext for procrastination. The report of Mr. Featherstonhaugh, erroneously believed, in England, to rest upon the results of actual exploration, had been sanctioned by the ministry, and seemed to extinguish the last hope that England would agree to any terms of settlement which the United States would deem reasonable. The danger of collision on the frontier became daily more imminent, and troops to the amount of seventeen regiments had been poured into the British provinces. The arrest of M'Leod, as we have already observed, had brought matters to a point at which the public sensibility of England would not have allowed a minister to blink the question. Lord Palmerston is known to have written to Mr. Fox, that the arrest of M'Leod, under the authority of the State of New York, was universally regarded in England as a direct affront to the British government, and that such was the excitement caused by it that, had M'Leod been condemned and executed, it would not have been in the power either of ministers or opposition, or the leading men of both parties, to prevent immediate war. At the same time, Lord Palmerston was urging France into a co-operation with the four other leading powers of Europe in the adoption of a policy, by the negotiation of the quintuple treaty, which would have left the United States in a position of dangerous insulation on the subject of the great maritime question of the day.

At this juncture a change of administration occurred in England, subsequent but by a few months only to that which took place in the government of the United States. Lord Melbourne's government gave way to that of Sir Robert Peel in the summer of 1841; it remained to be seen with what influence on the relations of the two countries. Some circumstances occurred to put at risk the beneficial tendency toward an accommodation, which might naturally be hoped for from a change of administration nearly simultaneous on both sides of the water. A note of a very uncompromising character, on the subject of the search of American vessels on the coast of Africa, had been addressed to Mr. Stevenson by Lord Palmerston on the 27th of August, 1841, a day only before the close

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of Lord Melbourne's ministry, to which Mr. Stevenson replied in the same strain. The answer of Lord Aberdeen, who had succeeded Lord Palmerston as Secretary of State for Foreign Affairs, bears date 10th of October, 1841, and an elaborate rejoinder was returned by Mr. Stevenson on the very day of his departure from London. Lord Aberdeen's reply to this note, addressed to Mr. Everett, was dated on the 20th of December, the day on which the quintuple treaty was signed at London by the representatives of the five powers, and it contained an announcement of that fact.

Happily, however, affairs were already taking a turn auspicious of better results. From his first entrance on office as Secretary of State, Mr. Webster, long familiar with the perplexed history of the negotiation relative to the boundary, had perceived the necessity of taking a "new departure." The negotiation had broken down under its own weight. It was like one of those lawsuits which, to the opprobrium of tribunals, descend from age to age: a disease of the body politic not merely chronic, but hereditary. Early in the summer of 1841, Mr. Webster had intimated to Mr. Fox, the British minister at Washington, that the American government was prepared to consider, and, if practicable, adopt, a conventional line as the only mode of cutting the Gordian knot of the controversy. This overture was, of course, conveyed to London. Though not leading to any result on the part of the ministry just going out of office, it was embraced by their successors in the same wise and conciliatory spirit in which it had been made. On the 26th of December, 1841, a note was addressed by Lord Aberdeen to Mr. Everett, inviting him to an interview for the following day, on which occasion he communicated the purpose of the government to send a special mission to the United States, Lord Ashburton being the person selected as minister, and furnished with full powers to settle every question in controversy.

This step on the part of the British government was as bold as it was wise. It met the difficulty in the face. It justly assumed the existence of a corresponding spirit of conciliation on the part of the United States, and of a desire to bring matters to a practical result. It was bold, because it was the last expedient for an amicable adjustment, and because if it should

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fail, its failure must necessarily lead to very serious and immediate consequences.

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In his choice of a minister, Lord Aberdeen was not less fortunate than he had been wise in proposing the measure. It was a decided advantage that a diplomatist by profession was not selected. Lord Ashburton was above the reach of the motives which influence politicians of an ordinary stamp, and unencumbered by the habits of routine which belong to men regularly trained in a career. He possessed a weight of character at home which made him independent of the vulgar resorts of popularity. He was animated by a kindly feeling, and bound by kindly associations with this country. There was certainly no public man in England who united in an equal degree the confidence of his own government and country with those claims to the good-will of the opposite party, which were scarcely less essential to success. It may not be improper to add, that Mr. Webster had passed some months in England in 1839, had been received with great distinction and kindness by prominent men of all parties, and that Lord Ashburton, among others, had made his acquaintance. He knew, therefore, that his immediate intercourse with the American government would not be through an entire stranger, and was no doubt in some measure decided to accept the mission, by his reliance on the upright and honorable character of the American secretary.

With the appointment of Lord Ashburton, the discussion of the main questions in controversy between the two countries, as far as it had been carried on in London, was transferred to Washington. But as an earnest of the conciliatory spirit which bore sway in the British councils, Lord Aberdeen had announced to Mr. Everett, in the interval which elapsed between Lord Ashburton's appointment and his arrival at his place of destination, that the queen's government admitted the wrong done by the detention of the "Tigris" and "Seamew" in the African waters, and was prepared to indemnify their owners for the losses sustained.

Notwithstanding the favorable circumstances under which the mission of Lord Ashburton was instituted, the great difficulties to be overcome were not long in being felt. The points in dispute in reference to the boundary had for years been the subject of discussion, more or less, throughout the country, but

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especially in Massachusetts and Maine (the states having an immediate territorial interest in its decision), and, above all, in the last-named state. Parties, differing on all other great questions, emulated each other in the zeal with which they asserted the American side of this dispute. So strong and unanimous was the feeling, that when the award of the King of the Netherlands arrived, the firm purpose of General Jackson to accept it was subdued. The writer of these pages was informed by the late Mr. Forsyth, while Secretary of State, that when the award reached this country, General Jackson regarded it as definitive, and was disposed, without consulting the Senate, to issue his proclamation announcing it as such; and that he was driven from this purpose by the representations of his friends in Maine, that such a course would cost them the state; and he was accustomed to add, in reference to the inconveniences caused by the rejection of the award, and the still more serious evils to be anticipated, that "it was somewhat singular, that the only occasion of importance in his life in which he had allowed himself to be overruled by his friends, was one of all others in which he ought to have adhered to his own opinions."

The following pages show that the first step taken by Mr. Webster, after receiving the directions of the President in reference to the negotiation, was to invite the co-operation of Massachusetts and Maine, the territory in dispute being the property of the two states, and under the jurisdiction of the latter. The extent of the treaty-making power of the United States, in a matter of such delicacy as the cession of territory claimed by a state to be within its limits, belongs to the more difficult class of constitutional doctrines. We have seen both the theory and practice of General Jackson on this point. The administration of Mr. Tyler took for granted that the full consent of Massachusetts and Maine was necessary to any adjustment of this great dispute on the principle of mutual cession and equivalents, or any other principle than that of the ascertainment of the true original line of boundary by agreement, mutual commission, or arbitration. Communications were accordingly addressed to the governors of the two states. Massachusetts had anticipated the necessity of the measure, and made provision for the appointment of commissioners. The Legislature

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of Maine was promptly convened for the same purpose by the late Governor Fairfield. Four parties were thus in presence at Washington for the management of the negotiation: the United States and Great Britain, Massachusetts and Maine. Recollecting that the question to be settled was one which had defied all the arts of diplomacy for half a century, it seemed to a distant, and especially a European observer, as if the last experiment, exceeding every former step in its necessary complication, was destined to a failure proportionably signal and ignominious. The writer of these remarks was in a condition to know that the course pursued by the American secretary, in making the result of the negotiation relative to the boundary contingent upon the approval of the state commissioners, was regarded in Europe as decidedly ominous of its failure.

It undoubtedly required a high degree of political courage thus to put the absolute control of the subject, to a certain extent, out of the hands of the national government; but it was a courage fully warranted by the event. It is now evident that this mode of procedure was the only one which could have been adopted with any hope of success. Though complicated in appearance, it was in reality the simplest mode in which the co-operation of the states could have been secured. The commissions were, upon the whole, happily constituted; they were framed in each state without reference to party views. By their presence in Washington, it was in the power of the Secretary of State to avail himself, at every difficult conjuncture, of their counsel. Limited in number, they yet represented the public opinion of the two states, as fully as it could have been done by the entire body of their Legislatures; while it is quite evident that any attempt to refer to large deliberative bodies at home the discussion of the separate points which arose in the negotiation, would have been physically impossible and politically absurd. In looking back, after the lapse of a few years, at the correspondence between the commissioners and the Secretary of State, as it appears in the present volume, it must be admitted that there are occasionally, on the part of the former, a tone and spirit which we might wish to qualify, and which were not calculated at the time to advance the negotiations. It is always easy to make trouble; true statesmanship seeks, without compromise of principle, to save trouble, and by honorable

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means to attain great ends. But it must, on the whole, be allowed that the concurrence of the states was yielded by their representatives as readily as could be expected under the circumstances of the case, and great credit is due to several of the gentlemen on the commissions for this result. They consisted, on the part of Maine, of Messrs. Edward Kavanagh, Edward Kent, William P. Preble, and John Otis; and on the part of Massachusetts, of Messrs. Abbott Lawrence, John Mills, and Charles Allen.

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While we name with honor the gentlemen forming the commissions, a tribute of respect is also due to the patriotism of the states immediately concerned, and especially of Maine. To devolve on any individuals, however high in public regard, a power of transferring, without ratification or appeal, a portion of the territory of the state for such considerations as those individuals might judge to be adequate, was a measure to be expected only in a case of clear necessity and high confidence. Mr. Webster is known to have regarded this with the utmost concern and anxiety as the turning-point of the whole attempt. His letter to Governor Fairfield* states the case with equal strength and fairness, and puts in striking contrast the course there recommended, with that of proceeding to agree to another arbitration, as had been offered by the preceding administration, and assented to by England. The fate of the negotiation might be considered as involved in the success of this appeal to the chief magistrate of Maine, and through him to his constituents. It is said that when Mr. Webster heard that the Legislature of Maine had adopted the resolutions for the commission, he went to President Tyler and said, with evident satisfaction and some animation, "*The crisis is past.*"

A considerable portion, though not the whole, of the official correspondence between the Secretary of State and the other parties to the negotiation is contained in the following pages. The documents published of course exhibit full proof of the ability with which the argument was conducted. They probably furnish but an inadequate specimen of the judgment, tact, and moral power required to conduct such a negotiation to a successful result. National, state, and individual susceptibilities were to be respected and soothed; adverse interests, real or imaginary, to be consulted; the ordeal of the Senate to be

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passed through after every other difficulty had been overcome, and all this in an atmosphere as little favorable to such an operation as can be imagined. What neither Mr. Monroe, in the "era of good feelings," nor the ability and experience of Messrs. Adams, Clay, and Gallatin, nor General Jackson's overwhelming popularity had been able to bring about, was effected under the administration of Mr. Tyler, though that administration seemed already crumbling to pieces for want of harmony between some of the members and the head, and between that head and the party which had brought him into power. No higher tribute can be paid to the ability and temper which were brought to the work.

It was, however, in truth, an adjustment equally honorable and advantageous to all parties. There is not an individual of common sense or common conscience in Maine or Massachusetts, in the United States or Great Britain, who would now wish it disturbed. It took from Maine a tract of land northwest of the St. John's, which the writer certainly believes belonged to her under the treaty of 1783. But it is not enough that we think ourselves right: the other party thinks the same; and when there is no common tribunal which both acknowledge, there must be compromise. The tract of land in question, for any purpose of cultivation or settlement, was without value; and had it been otherwise, it would not have been worth the cost of a naval armament or one military expedition, to say nothing of the abomination of shedding blood on such an issue. But the disputed title to this worthless tract of morass, heath, and rock, covered with snow or fog throughout the greater part of the year, was not ceded gratuitously. We obtained the navigation of the St. John's, the natural outlet of the whole country, without which the territory watered by it would have been of comparatively little value; we obtained a good natural boundary as far as the course of the river was followed; and we established the line which we claimed at the head of the Connecticut, on Lake Champlain, and on the upper lakes: territorial objects of considerable interest. Great Britain had equal reason to be satisfied with the result. For her the territory northwest of the St. John's, worthless to us, had a geographical and political value; it gave her a convenient connection between her two provinces, which was all she desired.

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Both sides gained the only object which really was of importance to either, a settlement by creditable means of a wearisome national controversy; an honorable escape from the scourge and curse of war.

Before leaving this part of the subject, we may with propriety observe, that both governments appear to have been fortunate in the constitution of the joint commission to survey, run, and mark the long line of boundary. Mr. Albert Smith, of Maine, was appointed commissioner on the part of the United States, with Major James D. Graham, of the United States Topographical Engineers, as head of his scientific corps, and Mr. Edward Webster* as his secretary. On the part of Great Britain, Lieutenant Colonel J. B. B. Estcourt, of her majesty's service, was appointed commissioner, with Captain W. H. Robinson, Royal Engineers, as principal astronomer, and J. Scott, Esq., as secretary. Other professional gentlemen were also employed on both sides. Great harmony characterized all the proceedings and results of the commission. The lines were accurately run, and that part of them not designated by rivers marked all the way by substantial cast-iron monuments, with suitable inscriptions, at every mile, and at most of the principal angles; and wherever the lines extended through forests, the trees were cut down and cleared to the width of thirty feet. All the islands in the St. John's were also designated with iron monuments, with inscriptions thereon, indicating the government to which they belonged; and upon that and all other streams forming portions of the boundary, monuments were erected at the junction of every branch with the main river.

But it is time to advert to the other great and difficult questions included in this adjustment. The extradition of fugitives from justice is regarded by Grotius and other respectable authorities as the duty of states, by the law of nations. Other

* In the interval between the writing and printing of this introduction, intelligence was received from the army near Mexico of the decease of this promising and lamented young gentleman (at the time of his decease a major in the Massachusetts regiment), the younger son of Mr. Webster. In the same short interval, two other persons mentioned, viz., President Adams and Mr. Wheaton, have been also called away; to say nothing of the tremendous revolution, by which the monarchy of France has been overturned and the king and his minister (also alluded to in the following pages) driven from the country.

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authorities reject this doctrine;* and if it be the law of nations, it requires for its execution so much administrative machinery as to be of no practical value without treaty stipulations. The treaty of 1794 with Great Britain (Jay's treaty) made provision for a mutual extradition of fugitives, in cases of murder and forgery; and the great case of Jonathan Robbins, immortalized by the argument of Chief-justice Marshall in defense of his surrender, gave a political notoriety to that feature of the treaty not favorable to its renewal in subsequent negotiations. The treaty stipulation expired by its own limitation in 1806. Besides the convenience of such an understanding on the part of the two great commercial countries, between which language, appearance, and manners render mutual escape so easy, the condition of the frontier of the United States and Canada was such as to make this provision all but necessary for the preservation of the peace of the two countries. An extensive secret organization existed in the border states, the object of which was, under the delusive name of "sympathy," to foment and aid rebellion in the British provinces. Although an agreement for mutual extradition of necessity left untouched a great deal of political agitation unfriendly to border peace, murder and arson were, of course, within its provisions. It appears from the testimony of the parties best informed on the subject, that the happiest consequences flowed from this article of the Treaty of Washington. We heard no more of border forays, "Hunters' lodges," "associations for the liberty of Canada," or violences offered or retaliated across the line. The mild but certain influence of law imposed a restraint, which even costly and formidable military means had not been found entirely adequate to produce.

Some odium was attempted to be raised against this article of the treaty, from the circumstance that a female who had fled from Scotland, charged with the murder of her husband, was arrested, sent home for trial, and found by the jury "not guilty." There was some inaccuracy in this statement of the facts. The verdict of the jury, according to the forms of the Scottish law, was "not proven," which, though it operates as an acquittal, leaves an unremoved suspicion of guilt. But if

* The authorities are given in *Story's Commentaries*, vol. iii., p. 675, 676; *Conflict of Laws*, p. 520, 522; and in *Kent's Commentaries*, vol. i., p. 36, 37.

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the case had been otherwise, and the acquittal plenary, what argument does it furnish against the extradition clause of the treaty? No one can doubt that there was a *primâ facie* case for arrest and trial. Such was the judgment of the magistrates both of Scotland and the United States. Such was the judgment of the conscience of the party accused when she fled her country. The United States have no interest in screening from trial parties legally charged with high crimes in England. England has as little interest in affording an asylum to fugitives legally charged with felonies in America. If the female in question was rightfully discharged, it proves not that persons suspected of murder ought to escape untried from justice (nothing can prove such an absurdity), but that the tribunals of the two countries may be safely trusted to administer criminal justice toward their respective subjects and citizens.

Before leaving this topic, it may be observed that the doctrine and practice of the United States, in reference to the execution of treaty stipulations, are decidedly in advance of those of England. In future compacts with that government, provision ought to be made to place the parties on an equal footing in this respect. By the Constitution of the United States, a treaty is a part of the law of the land, and as such all concerned are bound to obey it, and within their competence to execute it. If it contain provisions which can not be carried into effect without legislative provision—as, for instance, an appropriation—Congress, though not compellable to pass the law, is bound by a high moral and political obligation to do so; and, in point of fact, has rarely hesitated, and never omitted to do its duty in this respect. In reference to extradition, it has been held to be within the competence of the executive, and no legislation has been deemed necessary. Whatever may be the theory of the English government in this respect, the practice is different.* The treaty binds nobody till its provisions are enacted by law. It may even happen—it did happen in reference to the extradition clause of the Treaty of

* Blackstone states the doctrine of the British Constitution to be the same as ours. "Whatever contracts the king engages in, no other power in the kingdom can legally delay, resist, or annul" (vol. i., p. 257). Such, however, is not the practice. The courts of law in England will not allow a treaty to be pleaded against an act of Parliament.

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Washington—that conditions may be introduced into the law which do not exist in the treaty. The American courts, in such a case, would decide so much of the law as conflicted with the treaty to be unconstitutional. The English courts, on the contrary, would regard as a dead letter so much of the treaty as was not re-enacted in the law. Several claims on the British government have arisen within the last thirty years, on behalf of American citizens, for export and import duties levied, as has been alleged, on American property, in violation of the commercial convention between the two countries. The claimants have found it impossible to obtain a legal adjudication of their claims (to which they have avowed their willingness to submit them, although before the tribunals of a foreign government), from the refusal of the courts to allow a treaty to be pleaded against an act of Parliament. A very considerable portion of the correspondence of the United States' minister in London with the British government, for the last twenty-five years, has grown out of claims of this description.

The stipulations for extradition in the Treaty of Washington appear to have served as a model for those since entered into between the most considerable European powers. A convention for the same purpose was concluded between England and France on the 13th of February, 1843, and other similar compacts have, it is believed, still more recently been negotiated. Between the United States and Great Britain, the operation of this part of the treaty has, in all ordinary cases, been entirely satisfactory. Persons charged with the crimes to which its provisions extend have been mutually surrendered; and the cause of public justice, and in many cases important private interests, have been materially served on both sides of the water.

Not inferior in importance and delicacy to the other subjects provided for by the treaty, was that which concerned the measures for the suppression of "the slave trade" on the coast of Africa. The law of nations, as understood and laid down by the most respectable authorities and tribunals, European and American, recognizes the right of search of neutral vessels in time of war, by the public ships of the belligerents. It recognizes no right of search in time of peace. It makes no distinction between a right of visitation and a right of search.

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To compel a trading vessel, against the will of her commander, to come to and be boarded, for any purpose whatsoever, is an exercise of the right of search which the law of nations concedes to belligerents for certain purposes. To do this in time of peace, under whatever name it may be excused or justified, is to perform an act of mere power, for which the law of nations affords no warrant. The moral quality of the action, and the estimate formed of it, will of course depend upon circumstances, motives, and manner. If an armed ship board a vessel under reasonable suspicion that she is a pirate, and when there is no other convenient mode of ascertaining that point, there would be no cause of blame, although the suspicion turned out to be groundless.

The British government, for the praiseworthy purpose of putting a stop to the detestable traffic in slaves, has at different times entered into conventions with several of the states of Europe, authorizing a mutual right of search of the trading vessels of each contracting party by the armed cruisers of the other party. These treaties give no right to search the vessels of nations not parties to them. But if an armed ship of either party should search a vessel of a third power under a reasonable suspicion that she belonged to the other contracting party, and was pursuing the slave trade in contravention of the treaty, this act of power, performed by mistake, and with requisite moderation and circumspection in the manner, would not be ground of offense to the government of the third nation. It would, however, authorize a reasonable expectation of indemnification on behalf of the private individuals who might suffer by the detention, as in other cases of injury inflicted on innocent parties by public functionaries acting with good intentions at their peril.

The government of the United States, both in its executive and legislative branches, has at almost all times manifested an extreme repugnance to enter into conventions for a mutual right of search. It has not yielded to any other power in its aversion to the slave trade, which it was the first government to denounce as piracy. The reluctance in question grew principally out of the injuries inflicted upon the American commerce, and still more out of the personal outrages in the impressment of American seamen, which took place during the

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wars of Napoleon, and incidentally to the belligerent right of search and the enforcement of the Orders in Council and the Berlin and Milan decrees. Besides a wholesale confiscation of American property, hundreds of American seamen were impressed into the ships of war of Great Britain. So deeply had the public sensibility been wounded on both points, that any extension of the right of search by the consent of the United States was for a long time nearly hopeless.

But this feeling, strong and general as it was, yielded at last to the detestation of the slave trade. Toward the close of the second administration of Mr. Monroe the executive had been induced, acting under the sanction of resolutions of the two houses of Congress, to agree to a convention with Great Britain for a mutual right of search of vessels suspected of being engaged in the traffic. This convention was negotiated in London by Mr. Rush on the part of the United States, Mr. Canning being Secretary of State for Foreign Affairs.

In defining the limits within which this right should be exercised, the coasts of America were included. The Senate was of opinion that such a provision might be regarded as an admission that the slave trade was carried on between the coasts of Africa and the United States, contrary to the known fact, and to the reproach either of the will or power of the United States to enforce their laws, by which it was declared to be piracy. It also placed the whole coast of the Union under the *surveillance* of the cruisers of a foreign power. The Senate, accordingly, ratified the treaty, with an amendment exempting the coasts of the United States from the operation of the article. They also introduced other amendments of less importance.

On the return of the treaty to London thus amended, Mr. Canning gave way to a feeling of dissatisfaction at the course pursued by the Senate, not so much on account of any decided objection to the amendment in itself considered, as to the claim of the Senate to introduce any change into a treaty negotiated according to instructions. Under the influence of this feeling, Mr. Canning refused to ratify the treaty as amended, and no further attempt was at that time made to renew the negotiation.

It will probably be admitted on all hands, at the present day, that Mr. Canning's scruple was without foundation. The treaty

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had been negotiated by this accomplished statesman, under the full knowledge that the Constitution of the United States reserves this power to the Senate. That it should be exercised was, therefore, no more matter of complaint than that the treaty should be referred at all to the ratification of the Senate. The course pursued by Mr. Canning was greatly to be regretted, as it postponed the amicable adjustment of this matter for eighteen years, not without risk of serious misunderstanding in the interval.

Attempts were made on the part of England, during the ministry of Lord Melbourne, to renew the negotiation with the United States, but without success. Conventions between France and England, for a mutual right of search within certain limits, were concluded in 1831 and 1833, under the ministry of the Duc de Broglie, without awakening to the public sensibility in the former country. As these treaties multiplied, the activity of the English cruisers increased. After the treaty with Portugal in 1838, the vessels of that country, which, with those of Spain, were most largely engaged in the traffic, began to assume the flag of the United States as a protection; and in many cases also, although the property of vessels and cargo had, by collusive transfers on the African coast, become Spanish or Portuguese, the vessels had been built and fitted out in the United States, and too often, it may be feared, with American capital. Vessels of this description were provided with two sets of papers, to be used as occasion might require.

Had nothing further been done by British cruisers than to board and search these vessels, whether before or after a transfer of this kind, no complaint would probably have been made by the government of the United States. But as many American vessels were engaged in lawful commerce to the coast of Africa, it frequently happened that they were boarded by British cruisers, not always under the command of discreet officers. Some voyages were broken up, officers and men occasionally ill-treated, and vessels sent to the United States or Sierra Leone for adjudication.

In 1840 an agreement was made between the officers in command of the British and American squadrons respectively sanctioning a reciprocal right of search on the coasts of Africa. It will be found at pages 73 and 74 of the present vol-

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ume. It was a well-meant but unauthorized step, and was promptly disavowed by the administration of Mr. Van Buren. Its operation, while it lasted, was but to increase the existing difficulty. Reports of the interruptions experienced by our commerce in the African waters began greatly to multiply. There was a strong interest on the part of those surreptitiously engaged in the traffic to give them currency. A deep feeling began to be manifested in the country; and the correspondence between the American minister in London and Lord Palmerston, in the last days of the Melbourne ministry, was such as to show the somewhat critical point which the controversy had reached.

This controversy was transmitted, as we have seen, to the new administrations on both sides of the water, but soon assumed a somewhat modified character. The quintuple treaty, as it was called, was concluded at London on the 20th of December, 1841, by England, France, Austria, Prussia, and Russia; and information of that fact, as we have seen above, was given by Lord Aberdeen to Mr. Everett the same day. A strong desire was intimated that the United States would join this association of the great powers, although no formal invitation for that purpose was addressed to them. But the recent occurrences on the coast of Africa, and the tone of the correspondence above alluded to, had increased the standing repugnance of the United States to the recognition of the right of search in time of peace.

In the mean time, the same complaints—sometimes just, sometimes exaggerated, sometimes groundless—had reached France from the coast of Africa, and a strong feeling against the right of search was produced in that country. The incidents connected with the adjustment of the Syrian question in 1840 had greatly irritated the French ministry and people, and the present was deemed a favorable moment for retaliation. On the assembling of the Chambers, an amendment was moved by M. Lefebvre to the address in reply to the king's speech in the following terms: "We have also the confidence, that in granting its concurrence to the suppression of a criminal traffic, your government will know how to preserve from every attack the interest of our commerce and the independence of our

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flag." This amendment was adopted by the unanimous vote of the Chambers.

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This was the most formidable parliamentary check ever encountered, before or since, by M. Guizot's administration.* It excited profound sensation throughout Europe. It compelled the French ministry to make the painful sacrifice of a convention negotiated agreeably to instructions, and not differing in principle from those of 1831 and 1833, which were consequently liable to be involved in its fate. The ratification of the quintuple treaty was felt to be out of the question. Although it soon appeared that the king was determined to sustain M. Guizot, it was by no means apparent in what manner his administration was to be rescued from the present embarrassment.

The public feeling in France was considerably heightened by various documents which appeared at this juncture, in connection with the controversy between the United States and Great Britain. The President's Message and its accompanying papers reached Europe about the period of the opening of the session. A very few days after the adoption of M. Lefebvre's amendment, a pamphlet, written by General Cass, was published in Paris, and, being soon after translated into French and widely circulated, contributed to strengthen the current of public feeling. A more elaborate essay on the right of search was, in the course of the season, published by Mr. Wheaton, the minister of the United States at Berlin, in which the theory of a right of search in time of peace was vigorously assailed.

The preceding sketch of the history of the question will show the difficulty of the position in reference to this most important interest, at the time Lord Ashburton's mission was instituted. With what practical good sense and high statesmanship the controversy was terminated is known to the country, and is seen in the following pages. It is unnecessary here to retrace the steps of the correspondence, to comment on the eighth article of the Treaty of Washington, or to analyze the parliamentary and diplomatic discussions to which in the following year it gave rise. It is enough to say, that under circumstances of some embarrassment to the Department of State, a course of procedure was happily devised and incorporated

* It is scarcely necessary to state that this was written before the late revolution in France.

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with the treaty, which, leaving untouched the metaphysics of the question, furnished a satisfactory practical solution of the difficulty. Circumstances having made a re-statement expedient of the principles maintained by the United States on this most important subject, a letter was addressed by Mr. Webster to Mr. Everett, on the 28th of March, 1843, to be read to the British minister, in which the law of nations applicable to the subject was expounded by the American secretary with a clearness and power which will render any further discussion of the subject, under its present aspects, entirely superfluous. Nor will it be thought out of place to acknowledge the fairness, good temper, and ability with which the doctrine and practice of the English government were sustained by the Earl of Aberdeen.

The effect of the eighth article of the Treaty of Washington was decisive. It raised the jealousy already existing in France on this subject to the point of uncontrollable repugnance. The ratification of the quintuple treaty had long been abandoned. It was soon evident that the conventions of 1831 and 1833 must be given up. In the course of the year 1844, the Duc de Broglie, the honorable and accomplished minister by whom they had been negotiated, accepted a special mission to London, for the purpose of coming to some satisfactory arrangement by way of substitute, and a convention was soon concluded with the British government on precisely the same principles as those of the Treaty of Washington.

It may be matter of regret that the public feeling of the United States has become so strong and fixed against a mutual right of search on the coast of Africa for the suppression of the slave trade. This detestable traffic still exists, it is to be feared, unimpaired in extent, and with aggravated horrors, caused by the expedients employed to evade the cruisers. In a *mutual* right of search there can be no disparagement. It is not easy to see how it can be thought degrading to the national honor, while the belligerent right of search, which makes the armed cruisers of the parties at war, and their courts of admiralty, sovereign arbiters of the seas, is submitted to without a murmur. The enormous evils of the traffic ought to reconcile the United States to the adoption of the measures best calculated to repress it; among which, a mutual right of search by agree-

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ment with all the great powers of Christendom, is no doubt the most efficacious. Above all, it may be hoped that the suggestion of Mr. Webster will be borne in mind, in any future discussions of this and other maritime questions, that the policy of the United States is not that of a feeble naval power, interested in exaggerating the doctrine of neutral inviolability. A respect for every independent flag is a common interest of all civilized states, powerful or weak; but the rank of the United States among naval powers, and their position as the great maritime power on the eastern coasts of the Atlantic and the western coasts of the Pacific, may lead them to doubt the expediency of pressing too far the views they have hitherto held, and moderate their anxiety to construe with extreme strictness the rights which the law of nations concedes to public vessels.

The three subjects on which we have dwelt, viz., the north-eastern boundary, the extradition of fugitives, and the suppression of the slave trade, were the only ones which required to be provided for by treaty stipulation. Other subjects, scarcely less important, and fully as difficult, were happily disposed of in the correspondence of the plenipotentiaries. These were, the affair of the "Caroline," that of the "Creole," and the question of impressment. The space assigned to these introductory remarks is too nearly exhausted for any detail of observation on these topics; but we shall be pardoned for one or two reflections.

So urgent is the pressure on the public mind of the successive events, which demand attention each as it presents itself, that the formidable difficulties growing out of the destruction of the "Caroline" and the arrest of M'Leod are already fading from recollection. They formed, in reality, a crisis of a most serious and delicate character. A glance at the correspondence of the two governments at Washington and London sufficiently shows this to be the case. The violation of the territory of the United States in the destruction of the "Caroline," however unwarrantable the conduct of the "sympathizers" which provoked it, became, from the moment the British government assumed the responsibility of the act, an incident of the gravest character. On the other hand, the inability of the government of the United States to extricate M'Leod from the

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risks of a capital trial in a state court, although the government of England demanded his liberation, on the ground that he was acting under the legal orders of his superior, presented a difficulty in the working of our system equally novel and important. Other cases had arisen, in which important constitutional principles had failed to take effect in particular cases, for want of the requisite legislative provisions. It is believed that this was the first case in which a difficulty of this kind had presented itself in our foreign relations. A more threatening one can scarcely be imagined. In addition to the embarrassment occasioned by the refusal of the executive and judiciary of New York to yield to the representations of the General Government, the violent interference of the mob presented new difficulties of the most deplorable character. Had M'Leod been condemned and executed, it is not too much to say that war must have ensued. His acquittal averted this impending danger. The conciliatory spirit can not be too warmly commended with which, on the one hand, the proper reparation was made by Lord Ashburton for the violation of the American territory, and on the other hand, Congress, by the passage of a law (see page 137 of the present volume), provided an effectual legislative remedy for any future similar case. They show with what simplicity and ease the greatest evils may be averted, and the most desirable ends achieved by statesmen and governments animated by a sincere desire to promote the welfare of those who have placed power in their hands, not for selfish party purposes, but for the public good.

There is, perhaps, no part of the following pages in which as much force of statement and dialectic power are displayed as in the letter on "impressment." To incorporate a stipulation on this subject into a treaty was, regarding the antecedents of the question, impracticable. But the reply of Lord Ashburton to Mr. Webster's announcement of the American principle must be considered as acquiescence on the part of his government. It may be doubted whether this odious and essentially illegal practice will ever again be systematically resorted to even in England. Considering the advance made by public sentiment on all questions connected with personal liberty, "a hot-press on the Thames" would hardly stand the

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ordeal of an investigation in Parliament. It is certain that the right of impressing seamen from American vessels could never be practically asserted in a future war, with any other effect than that of adding the United States to the parties in the contest. No refinements in the doctrine of natural allegiance, although their theoretical soundness might equal their subtlety, would be of the least avail here. To force seamen from the deck of a peaceful neutral pursuing a lawful commerce, and compel them to serve for an indefinite and hopeless period on board a foreign man-of-war, is an act of violence and power to which no nation will submit that is able to resist it. In the case of the United States and Great Britain, that community of language and general appearance, which may have been considered as palliating the most deplorable results of the exercise of this power, in reality constitutes the strongest reason for its abandonment. The unquestionable danger that, with the best intentions, the foreign officer may mistake an American for an Englishman; the certainty that a reckless lieutenant, unmindful of consequences, but resolute upon recruiting his ship on a remote foreign station, will pretend to believe that he is seizing the subjects of his own government, whatever may be the evidence to the contrary, are reasons of themselves for denying on the threshold the existence of a right exposed to such inevitable and intolerable abuse.

These, and other views of the subject, are presented in Mr. Webster's letter to Lord Ashburton of the 8th of August, 1842, with a power of argument and force of illustration not often equaled in a state paper. That letter was spoken of, in the hearing of the writer of these remarks, by one whose name, if it could be mentioned with propriety, would give the highest authority to the opinion, as a composition not surpassed by any thing in the language. The principles laid down in it may be considered as incorporated into the public law of the United States, and will have their influence beyond our own territorial limits, and beyond our own time.

Some disappointment was probably felt, when the Treaty of Washington was published, that a settlement of the Oregon question was not included among its provisions. It need not be said that a subject of such magnitude did not escape the attention of the negotiators. It was, however, speedily infer-

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red by the American secretary, from the purport of his informal conferences with Lord Ashburton on this point, that an arrangement of this question was not then practicable, and that to attempt it would be to put the entire negotiation to great risk of failure. On the other hand, it was not less certain that, by closing up the other matters in controversy, the best preparation was made for bringing the Oregon dispute to an amicable issue whenever circumstances should favor that undertaking. Considerable firmness was no doubt required to adopt and act upon this policy, and to forego the attempt, at least, to settle a question rapidly growing into the most formidable magnitude. It is unnecessary to say how completely the course adopted has been justified by the event.

We have in the preceding remarks confined ourselves to the topics connected with the Treaty of Washington. The papers belonging to this subject occupy the larger part of the volume; it is in itself of paramount importance, and it is that which entered principally into the political discussions of the day. The residue of the volume contains the correspondence of Mr. Webster as Secretary of State on various subjects of great interest.

The first part of it pertains to our controversies with Mexico, and was carried on with M. de Bocanegra as Mexican Secretary of State and Foreign Relations. The great and unexpected changes, commenced and in progress in that quarter, since the date of this correspondence, will not impair the interest with which it will be read. It throws important light on the earlier stages of our controversy with that ill-advised and infatuated government. Among the papers in this part of the volume are those which relate to the Santa Fé prisoners and Captain Jones's attack on Monterey.

Under the head of "Relations with Spain" will be found a correspondence of great interest between the Chevalier d'Argaïz, the representative of that government, and Mr. Webster, on the subject of the "Amistad." The pertinacity with which this matter was pursued by Spain, after its adjudication by the Supreme Court of the United States, furnishes an instructive commentary upon the sincerity of that government in its measures for the abolition of the slave trade. The entire merits of this important and extraordinary case are condensed

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in Mr. Webster's letters of the 1st of September, 1841, and 21st of June, 1842.

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The next division of the volume, under the head of "China and the Sandwich Islands," embraces the instructions given to Mr. Cushing as commissioner to China, and the correspondence between Mr. Webster and Messrs. Richards and Haalilio on behalf of the Sandwich Islands. At any period less crowded with important events, the opening of diplomatic relations with China, and the conclusion of a treaty of commerce with that power, would have been deemed occurrences of unusual importance. It certainly reflects great credit on the administration, that it acted with such promptitude and efficiency in seizing this opportunity of multiplying avenues of commercial intercourse. Nor is less praise due to the energy and skill of the negotiator (Mr. Cushing) to whom this novel and important undertaking was confided, and who was able to embark from China, on his return homeward, in six months after his arrival, having in the mean time satisfactorily concluded the treaty.

The application of the representatives of the Sandwich Islands to the government of the United States, and the countenance extended to them at Washington, exercised a most salutary and seasonable influence over the destiny of those islands. The British government was promptly made aware of the course pursued by the United States, and was no doubt led in a considerable degree, by this circumstance, to promise the Hawaiian delegates, on the part of England, to respect the independent neutrality of those islands. In the mean time, the British admiral on that station had taken provisional possession of them on behalf of his government, in intended anticipation of a similar movement on the part of France. Had intelligence of this occurrence been received in London before the promise above alluded to was given by Lord Aberdeen to Messrs. Richards and Haalilio, it is not impossible that Great Britain might have felt herself warranted in retaining the protectorate of the Hawaiian Islands as an offset for the occupation of Tahiti by the French. As it was, the temporary arrangement of the British admiral was disavowed, and the government restored to the native chief.

A correspondence follows between Mr. Webster and the

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Portuguese minister on the subject of duties on Portuguese wines, and the volume closes with a report of great importance on the Sound duties and the Zoll Verein, topics to which events now in progress (April, 1848) will henceforward impart a greatly-increased importance.

This brief enumeration will of itself sufficiently show the extensive range of the subjects to which the attention of the American executive was called during the period to which it pertains.

In drawing these introductory remarks to a close, the writer can not forego the reflection that, although the papers contained in the present volume probably form but a small portion of the official correspondence of the Department of State for the period during which it was filled by Mr. Webster, they constitute, nevertheless, the most important part of the documentary record of a period of official service, brief, indeed, but as beneficial to the country as any of which the memory is preserved in her annals. The administration of General Harrison found the United States, in the spring of 1841, on the verge of a war, not with a feeble Spanish province, scarcely capable of a respectable resistance, but with the most powerful government on earth. The conduct of our foreign relations was intrusted to Mr. Webster, as Secretary of State, and in two years for which he filled that office controversies of fifty years' standing were terminated, new causes of quarrel that sprung up like hydra's heads were settled, and PEACE was preserved upon honorable terms. The British government, fresh from the conquest of China, perhaps never felt itself stronger than in the year 1842, and a full share of credit is due to the spirit of conciliation which swayed its councils. Much is due to the wise and amiable negotiator who was dispatched on the holy errand of peace; much to the patriotism of the Senate of the United States, who confirmed the treaty by a larger majority than ever before sustained a measure of this kind which divided public opinion; but the first meed of praise is unquestionably due to the negotiator. Let the just measure of that praise be estimated by reflecting what would be our condition at the present day if, instead of or in addition to the war with Mexico, we were involved in a war with Great Britain.

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DIPLOMATIC CORRESPONDENCE.

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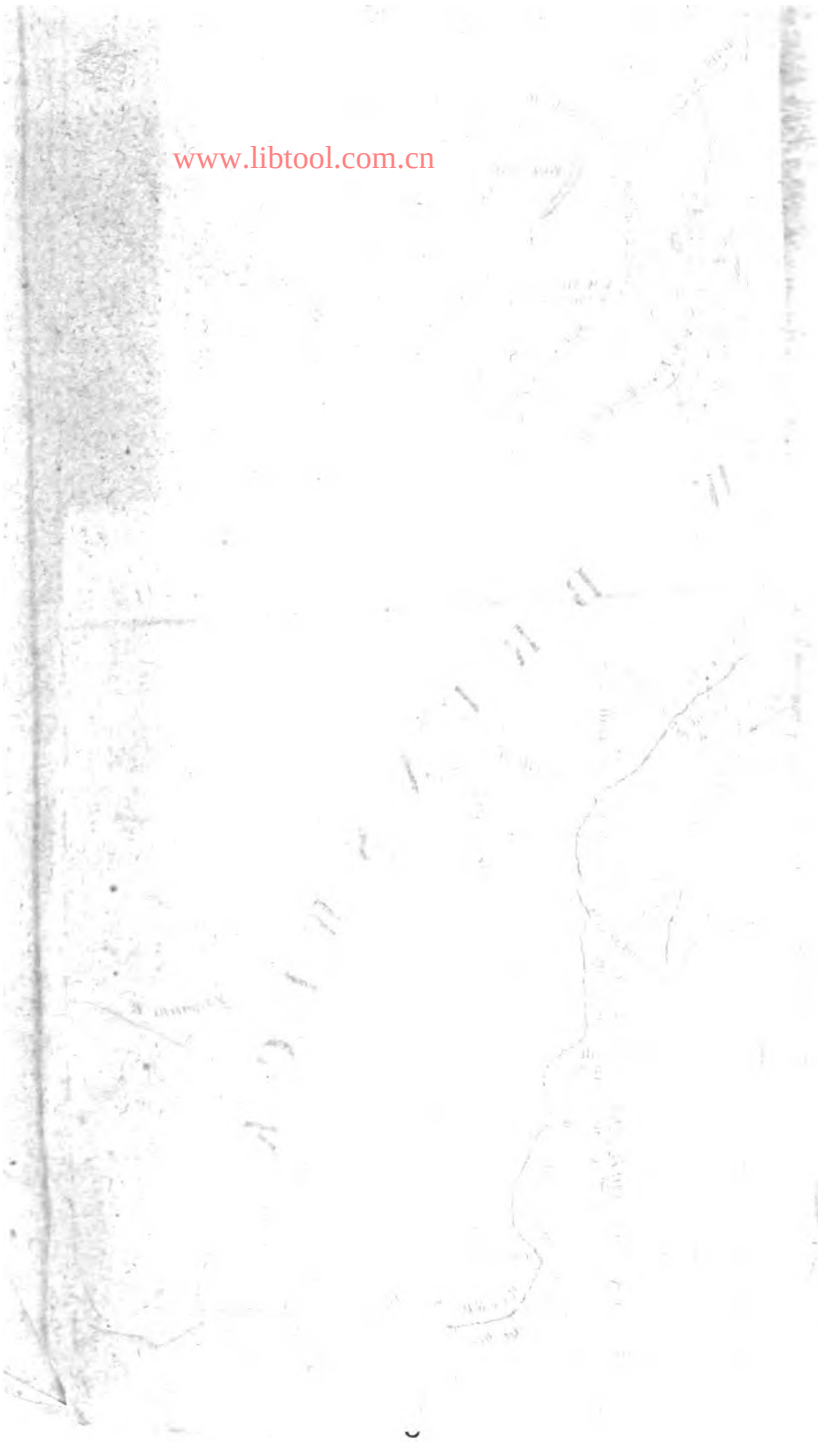

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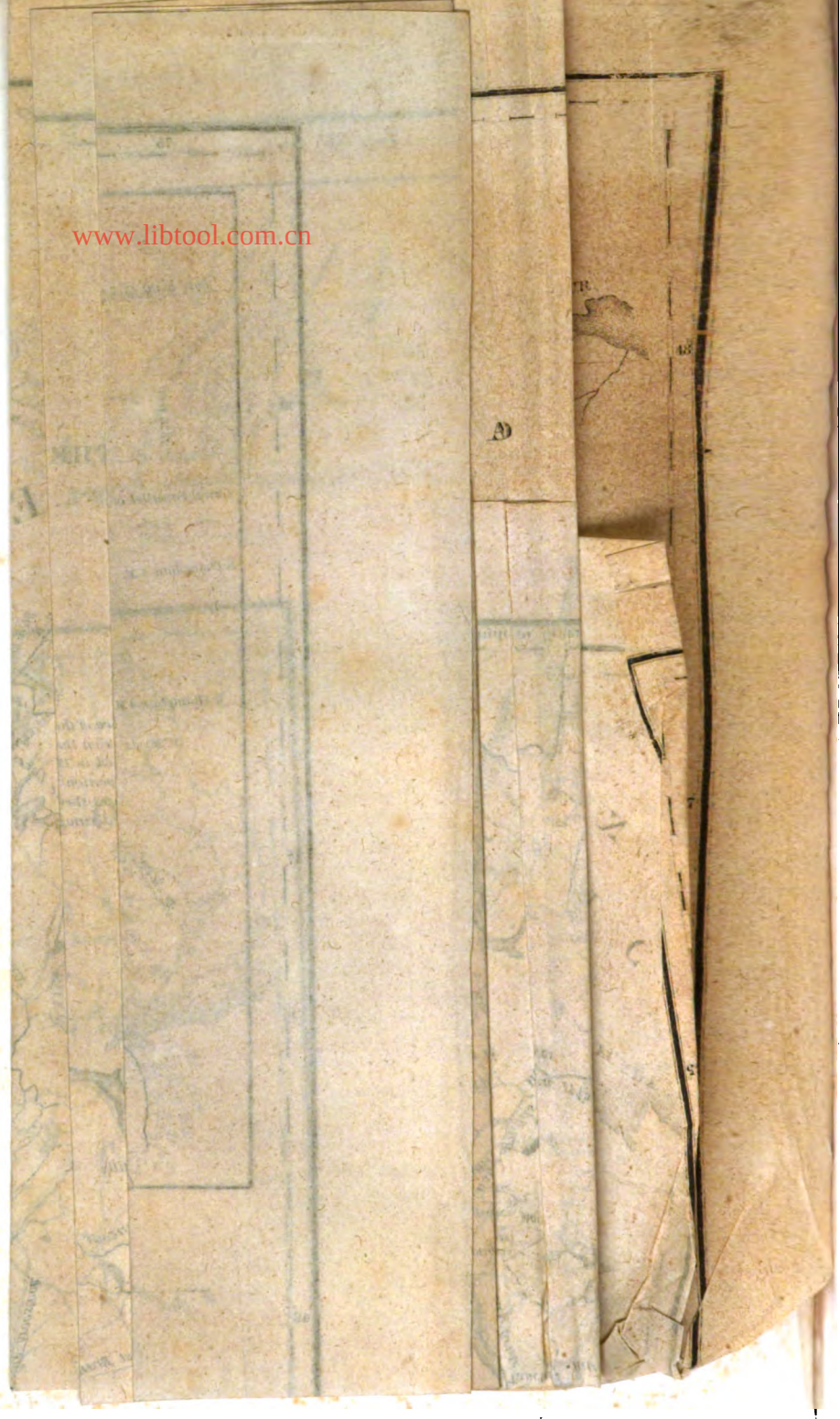

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DIPLOMATIC AND OFFICIAL PAPERS.

TREATY OF WASHINGTON OF 1842.

NORTHEASTERN BOUNDARY.

A LEADING object sought to be accomplished, and which was accomplished, by the Treaty of Washington, was the settlement of the controversy between the United States and England relative to the northern and northeastern boundary of the United States.

The history of this controversy, from the Treaty of Peace, in 1783, to its final adjustment in 1842, is given in Mr. Webster's speech in the Senate, the 6th and 7th of April, 1846, which is contained in this publication. In the summer of 1841, Mr. Webster signified to Mr. Fox, the British minister at Washington, that, having received the President's authority for so doing, he was then willing to make an attempt to settle the boundary dispute, by agreeing on a conventional line, or line by compromise. In September of that year the ministry of Sir Robert Peel came into power; and Lord Aberdeen, Secretary of State for Foreign Affairs, having been informed of what had been said by Mr. Webster to Mr. Fox, invited Mr. Everett, at that time minister of the United States at the court of London, to an interview on that subject. The following correspondence immediately took place

Mr. Everett to Mr. Webster.—[EXTRACTS.]

LEGATION OF THE UNITED STATES, *London, December* 31, 1841.

* * * * * * *

At a late hour on the evening of the 26th, I received a note from the Earl of Aberdeen, requesting an interview for the following day, when I met him at the Foreign Office, agreeably to the appointment. After one or two general remarks upon the difficulty of bringing about an adjustment of the points of controversy between the governments, by a continuance of the discussions hitherto carried on, he said that her majesty's government had determined to take a decisive step toward that end, by sending a special minister to the United States, with a full power to make a final settlement of all matters in dispute. * * * * * This step was determined on from

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a sincere and earnest desire to bring the matter so long in controversy to an amicable settlement; and if, as he did not doubt, the same disposition existed at Washington, he thought this step afforded the most favorable, and, indeed, the only means of carrying it into effect. In the choice of the individual for the mission, Lord Aberdeen added, that he had been mainly influenced by a desire to select a person who would be peculiarly acceptable in the United States, as well as eminently qualified for the trust, and that he persuaded himself he had found one who, in both respects, was all that could be wished. He then named Lord Ashburton, who had consented to undertake the mission.

Although this communication was, of course, wholly unexpected to me, I felt no hesitation in expressing the great satisfaction with which I received it. I assured Lord Aberdeen that the President had nothing more at heart than an honorable adjustment of the matters in discussion between the two countries; that I was persuaded a more acceptable selection of a person for the important mission proposed could not have been made; and that I anticipated the happiest results from this overture.

Lord Aberdeen rejoined, that it was more than an *overture;* that Lord Ashburton would go with full powers to make a definitive arrangement on every point in discussion between the two countries. He was aware of the difficulty of some of them, particularly what had incorrectly been called the right of search, which he deemed the most difficult of all; but he was willing to confide this and all other matters in controversy to Lord Ashburton's discretion. He added, that they should have been quite willing to come to a general arrangement here, but they supposed I had not full powers for such a purpose.

This measure being determined on, Lord Aberdeen said he presumed it would be hardly worth while for us to continue the correspondence here on matters in dispute between the governments. He, of course, was quite willing to consider and reply to any statement I might think proper to make on any subject; but, pending the negotiations that might take place at Washington, he supposed no benefit could result from a simultaneous discussion here.

Mr. Webster to Mr. Everett.—[EXTRACT.]

DEPARTMENT OF STATE, *Washington, January* 29, 1842.

By the "Britannia," arrived at Boston, I have received your dispatch of the 28th of December (No. 4), and your other dispatch of the 31st of the same month (No. 5), with a postscript of the 3d of January.

The necessity of returning an early answer to these communications (as the "Britannia" is expected to leave Boston on the 1st of February) obliges me to postpone a reply to those

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parts of them which are not of considerable and immediate importance.

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The President expresses himself gratified with the manner in which the queen received you to present your letter of credence, and with the civility and respect which appear to characterize the deportment of Lord Aberdeen in his intercourse with you; and you will please signify to Lord Aberdeen the President's sincere disposition to bring all matters in discussion between the two governments to a speedy as well as an amicable adjustment.

The President has read Lord Aberdeen's note to you of the 20th of December, in reply to Mr. Stevenson's note to Lord Palmerston of the 21st of October, and thinks you were quite right in acknowledging the dispassionate tone of that paper. It is only by the exercise of calm reason that truth can be arrived at in questions of a complicated nature; and between states, each of which understands and respects the intelligence and the power of the other, there ought to be no unwillingness to follow its guidance. At the present day, no state is so high as that the principles of its intercourse with other nations are above question, or its conduct above scrutiny. On the contrary, the whole civilized world, now vastly better informed on such subjects than in former ages, and alive and sensible to the principles adopted, and the purposes avowed, by the leading states, necessarily constitutes a tribunal, august in character and formidable in its decisions. And it is before this tribunal, and upon the rules of natural justice, moral propriety, the usages of modern times, and the prescriptions of public law, that governments, which respect themselves and respect their neighbors, must be prepared to discuss, with candor and with dignity, any topics which may have caused differences to spring up between them.

Your dispatch of the 31st of December announces the important intelligence of an intention of dispatching a special minister from England to the United States, with full powers to settle every matter in dispute between the two governments; and the President directs me to say, that he regards this proceeding as originating in an entirely amicable spirit, and that it will be met, on his part, with perfectly corresponding sentiments. The high character of Lord Ashburton is well known to this government; and it is not doubted that he will enter on the duties assigned to him, not only with the advantages of much knowledge and experience in public affairs, but with a true desire to signalize his mission by assisting to place the peace of the two countries on a permanent basis. He will be received with the respect due to his own character, the character of the government which sends him, and the high importance, to both countries, of the subjects intrusted to his negotiation.

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The President approves your conduct in not pursuing in England the discussion of questions which are now to become the subjects of negotiation here.

(Signed), DANL. WEBSTER.

Lord Ashburton arrived in Washington, April 4, 1842; and shortly after Mr. Webster addressed the following letter to the Governor of the State of Maine:

Mr. Webster to Governor Fairfield.

DEPARTMENT OF STATE, *Washington, April* 11, 1842.

Your excellency is aware that, previous to March, 1841, a negotiation had been going on for some time between the Secretary of State of the United States, under the direction of the President, and the British minister accredited to this government, having for its object the creation of a joint commission for settling the controversy respecting the northeastern boundary of the United States, with a provision for an ultimate reference to arbitrators, to be appointed by some one of the sovereigns of Europe, in case an arbitration should become necessary. On the leading features of a convention for this purpose the two governments had become agreed; but on several matters of detail the parties differed, and appear to have been interchanging their respective views and opinions, projects, and counter-projects, without coming to any final arrangement, down to August, 1840. Various causes, not now necessary to be explained, arrested the progress of the negotiation at that time, and no considerable advance has since been made in it.

It seems to have been understood on both sides that, one arbitration having failed, it was the duty of the two parties to proceed to institute another, according to the spirit of the treaty of Ghent and other treaties; and the President has felt it to be his duty, unless some new course should be proposed, to cause the negotiation to be resumed, and pressed to its conclusion. But I have now to inform your excellency that Lord Ashburton, a minister plenipotentiary and special, has arrived at the seat of the government of the United States, charged with full powers from his sovereign to negotiate and settle the different matters in discussion between the two governments. I have further to state to you, that he has officially announced to this department that, in regard to the boundary question, he has authority to treat for a conventional line, or line by agreement, on such terms and conditions, and with such mutual considerations and equivalents, as may be thought just and equitable, and that he is ready to enter upon a negotiation for such conventional line so soon as this government shall say it is authorized and ready, on its part, to commence such negotiation.

Under these circumstances, the President has felt it to be his

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duty to call the serious attention of the governments of Maine and Massachusetts to the subject, and to submit to those governments the propriety of their co-operation, to a certain extent, and in a certain form, in an endeavor to terminate a controversy already of so long duration, and which seems very likely to be still considerably further protracted before the desired end of a final adjustment shall be attained, unless a shorter course of arriving at that end be adopted, than such as has heretofore been pursued, and as the two governments are still pursuing.

Yet, without the concurrence of the two states whose rights are more immediately concerned, both having an interest in the soil, and one of them in the jurisdiction and government, the duty of this government will be to adopt no new course, but, in compliance with treaty stipulations, and in furtherance of what has already been done, to hasten the pending negotiations as fast as possible, in the course hitherto adopted.

But the President thinks it a highly desirable object to prevent the delays necessarily incident to any settlement of the question by these means. Such delays are great and unavoidable. It has been found that an exploration and examination of the several lines constitute a work of three years. The existing commission for making such exploration, under the authority of the United States, has been occupied two summers, and a very considerable portion of the work remains still to be done. If a joint commission should be appointed, and should go through the same work, and the commissioners should disagree, as is very possible, and an arbitration on that account become indispensable, the arbitrators might find it necessary to make an exploration and survey themselves, or cause the same to be done by others, of their own appointment. If to these causes, operating to postpone the final decision, be added the time necessary to appoint arbitrators, and for their preparation to leave Europe for the service, and the various retarding incidents always attending such operations, seven or eight years constitute, perhaps, the shortest period within which we can look for a final result. In the mean time, great expenses have been incurred, and further expenses can not be avoided. It is well known that the controversy has brought heavy charges upon Maine herself, to the remuneration or proper settlement of which she can not be expected to be indifferent. The exploration by the government of the United States has already cost a hundred thousand dollars, and the charge of another summer's work is in prospect. These facts may be sufficient to enable us to form a probable estimate of the whole expense likely to be incurred before the controversy can be settled by arbitration; and our experience admonishes us that even another arbitration might possibly fail.

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The opinion of this government upon the justice and validity of the American claim has been expressed at so many times, and in so many forms, that a repetition of that opinion is not necessary. But the subject is a subject in dispute. The government has agreed to make it matter of reference and arbitration; and it must fulfill that agreement, unless another mode for settling the controversy should be resorted to, with the hope of producing a speedier decision. The President proposes, then, that the governments of Maine and Massachusetts should severally appoint a commissioner or commissioners, empowered to confer with the authorities of this government upon a conventional line, or line by agreement, with its terms, conditions, considerations, and equivalents; with an understanding that no such line will be agreed upon without the assent of such commissioners.

This mode of proceeding, or some other which shall express assent beforehand, seems indispensable, if any negotiation for a conventional line is to be attempted; since, if happily a treaty should be the result of the negotiation, it can only be submitted to the Senate of the United States for ratification.

It is a subject of deep and sincere regret to the President that the British plenipotentiary did not arrive in the country and make known his powers in time to have made this communication before the annual session of the Legislature of the two states had been brought to a close. He perceives and laments the inconvenience which may be experienced from reassembling those legislatures. But the British mission is a special one; it does not supersede the resident mission of the British government at Washington, and its stay in the United States is not expected to be long. In addition to these considerations, it is to be suggested that more than four months of the session of Congress have already passed, and it is highly desirable, if any treaty for a conventional line should be agreed on, that it should be concluded before the session shall terminate, not only because of the necessity of the ratification of the Senate, but also because it is not impossible that measures may be thought advisable, or become important, which can only be accomplished by the authority of both Houses.

These considerations, in addition to the importance of the subject, and a firm conviction in the mind of the President that the interests of both countries, as well as the interests of the two states more immediately concerned, require a prompt effort to bring this dispute to an end, constrain him to express an earnest hope that your excellency will convene the Legislature of Maine, and submit the subject to its grave and candid deliberations. I am, &c., DANIEL WEBSTER.

His Excellency JOHN FAIRFIELD, *Governor of Maine.*

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The Governor of Maine to the President.

EXECUTIVE DEPARTMENT, *Augusta, May* 27, 1842.

SIR,—I have the honor to inclose a copy of preamble and resolutions adopted by the Legislature of this state relating to the subject of the northern and northeastern boundaries of Maine; and also to inform you that the Hon. Edward Kavanagh, Hon. Edward Kent, Hon. William P. Preble, and Hon. John Otis have been elected commissioners under said resolves. Most respectfully your obedient servant,

JOHN FAIRFIELD.

His Excellency JOHN TYLER, *President of the United States, Washington.*

Governor Davis to Mr. Webster.

EXECUTIVE DEPARTMENT, *Worcester, April* 27, 1842.

SIR,—Since I last addressed you, I have received your favor of the 16th instant, by which it appears the resolutions of the Legislature of this commonwealth have reached you. These resolves respecting the northeastern boundary were adopted to meet the contingency which has occurred, and to avoid any necessity for reassembling the Legislature on this account. As soon as it became certain that a special envoy was to be dispatched hither by the Queen of the United Kingdoms, it was apparent to me that he would be authorized to propose a conventional line, as this is manifestly the only alternative short of acceding to the treaty line of 1783. When the subject was brought to the attention of the Legislature, it seemed to entertain similar views, and with great harmony of opinion provided, as well as the state of things, which was then wholly conjectural, would enable them.

The council will meet on the 25th of May for the regular dispatch of business, when their attention will be invited to the expediency of consenting to the appointment of an agent or agents to represent the state. I have the honor to be your obedient servant,

J. DAVIS.

The SECRETARY OF STATE *for the United States.*

The Maine Commissioners to Mr. Webster.

FULLER'S HOTEL, *Washington, June* 12, 1842.

The commissioners of Maine, on the subject of the northeastern boundary, present their respectful compliments to the Honorable Mr. Webster, Secretary of State of the United States, and beg leave to inform him that they are now in this city ready to enter upon the business intrusted to them. They also avail themselves of the occasion to request him to name the time and place when and where it would suit the convenience of the Secretary of State to receive them.

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Mr. Webster to the Maine Commissioners.

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PRESIDENT'S SQUARE, *June* 12, 1842.

Mr. Webster has the honor to acknowledge the receipt of the note of the commissioners of Maine announcing their arrival, and their readiness to enter on the business of their appointment.

Mr. W. will have great pleasure in receiving the commissioners at the Department of State on Monday at one o'clock.

Commissioners of Massachusetts to Mr. Webster.

WASHINGTON, *June* 13, 1842.

SIR,—The undersigned, commissioners appointed by the State of Massachusetts to confer with the government of the United States upon a conventional line to be established on our north-eastern boundary, are ready to proceed in the execution of their commission whenever the secretary my signify his wish to meet them. Our colleague (Mr. Allen) will probably be here to-morrow.

We have the honor to remain, with the highest respect, your obedient servants,

ABBOTT LAWRENCE,
JOHN MILLS.

Hon. DANIEL WEBSTER, *Secretary of State.*

Mr. Webster to the Commissioners of Massachusetts.

DEPARTMENT OF STATE, *Washington, June* 13, 1842.

The undersigned has the honor to acknowledge the receipt of the communication addressed to him this day by Messrs. Lawrence and Mills, commissioners of the commonwealth of Massachusetts. He will be happy to see these gentlemen at this department at half past one o'clock P.M. to-day.

DANIEL WEBSTER.

Messrs. LAWRENCE and MILLS,
Commissioners of the Commonwealth of Massachusetts.

Mr. Webster to Lord Ashburton.

DEPARTMENT OF STATE, *Washington, June* 17, 1842.

Lord Ashburton having been charged by the queen's government with full powers to negotiate and settle all matters in discussion between the United States and England, and having, on his arrival at Washington, announced that, in relation to the question of the northeastern boundary of the United States, he was authorized to treat for a conventional line, or line by agreement, on such terms and conditions and with such mutual considerations and equivalents as might be thought just and equitable, and that he was ready to enter upon a negotia-

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tion for such conventional line so soon as this government should say that it was authorized and ready on its part to commence such negotiation, the undersigned, Secretary of State of the United States, has now the honor to acquaint his lordship, by direction of the President, that the undersigned is ready, on behalf of the government of the United States, and duly authorized to proceed to the consideration of such conventional line, or line by agreement, and will be happy to have an interview on that subject at his lordship's convenience.

The undersigned avails himself of this occasion to tender to Lord Ashburton assurances of his distinguished consideration.

DANIEL WEBSTER.

Lord ASHBURTON, &c., &c., &c.

Lord Ashburton to Mr. Webster.

WASHINGTON, *June* 17, 1842.

The undersigned, plenipotentiary of her Britannic majesty on an extraordinary and special mission to the United States of America, has the honor of acknowledging, with much satisfaction, the communication received this day from Mr. Webster, Secretary of State of the United States, that he is ready, on behalf of the United States, and duly authorized, in relation to the question of the northeastern boundary of the United States, to proceed to the consideration of a conventional line, or line by agreement, on such terms and conditions, and with such mutual considerations and equivalents as might be thought just and equitable. And in reply to Mr. Webster's invitation to the undersigned to fix some time for their first conference upon this subject, he begs to propose to call on Mr. Webster at the Department of State to-morrow at 12 o'clock for this purpose, should that time be perfectly convenient to Mr. Webster.

The undersigned avails himself of this opportunity to assure Mr. Webster of his distinguished consideration.

ASHBURTON.

Hon. DANIEL WEBSTER, &c., &c., &c.

Two or three letters between Mr. Webster and Lord Ashburton respecting the new line of the northeastern boundary are omitted, as being principally confined to questions local in their nature, and not now of public interest.

For the same reason, a letter from the Governor of Maine to Mr. Webster, of the 29th of June, is omitted.

Mr. Webster to the Maine Commissioners.

DEPARTMENT OF STATE, *Washington, July* 15, 1842.

GENTLEMEN,—You have had an opportunity of reading Lord Ashburton's note to me of the 11th of July. Since that date I

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have had full and frequent conferences with him respecting the eastern boundary, and believe I understand what is practicable to be done on that subject, so far as he is concerned. In these conferences he has made no positive or binding proposition, thinking, perhaps, it would be more desirable, under present circumstances, that such proposition should proceed from the side of the United States. I have reason to believe, however, that he would agree to a line of boundary between the United States and the British provinces of Canada and New Brunswick, such as is described in a paper accompanying this (marked B), and identified by my signature.

In establishing the line between the monument and the St. John, it is thought necessary to adhere to that run and marked by the surveyors of the two governments in 1817 and 1818. There is no doubt that the line recently run by Major Graham is more entirely accurate; but, being an *exparte* line, there would be objections to agreeing to it without examination, and thus another survey would become necessary. Grants and settlements, also, have been made in conformity with the former line, and its errors are so inconsiderable that it is not thought that their correction is a sufficient object to disturb these settlements. Similar considerations have had great weight in adjusting the line in other parts of it.

The territory in dispute between the two countries contains 12,027 square miles, equal to 7,697,280 acres.

By the line described in the accompanying paper, there will be assigned to the United States 7015 square miles, equal to 4,489,600 acres; and to England 5012 square miles, equal to 3,207,680 acres.

By the award of the King of the Netherlands, there was assigned to the United States 7908 square miles, 5,061,120 acres; to England 4119 square miles, 2,636,160 acres.

The territory proposed to be relinquished to England south of the line of the King of the Netherlands is, as you will see, the mountain range from the upper part of the St. Francis River to the meeting of the two contested lines of boundary, at the Metjarmette Portage, in the highlands, near the source of the St. John. This mountain tract contains 893 square miles, equal to 571,520 acres. It is supposed to be of no value for cultivation or settlement. On this point you will see herewith a letter from Captain Talcott, who has been occupied two summers in exploring the line of the highlands, and is intimately acquainted with the territory. The line leaves to the United States, between the base of the hills and the left bank of the St. John, and lying along upon the river, a territory of 657,280 acres, embracing, without doubt, all the valuable land south of the St. Francis and west of the St. John. Of the gen-

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eral division of the territory, it is believed it may be safely said, that while the portion remaining with the United States is, in quantity, seven twelfths, in value it is at least four fifths of the whole.

Nor is it supposed that the possession of the mountain region is of any importance in connection with the defense of the country or any military operations. It lies below all the accustomed practicable passages for troops into and out of Lower Canada; that is to say, the Chaudière, Lake Champlain, and the Richelieu, and the St. Lawrence. If an army, with its *materiel*, could possibly pass into Canada over these mountains, it would only find itself on the banks of the St. Lawrence *below* Quebec; and, on the other hand, it is not conceivable that an invading enemy from Lower Canada would attempt a passage in this direction, leaving the Chaudière on one hand and the route by Madawaska on the other.

If this line should be agreed to on the part of the United States, I suppose that the British minister would, as an equivalent, stipulate, first, for the use of the River St. John, for the conveyance of the timber growing on any of its branches, to tide-water, free from all discriminating tolls, impositions, or inabilities of any kind, the timber enjoying all the privileges of British colonial timber. All opinions concur that this privilege of navigation must greatly enhance the value of the territory and the timber growing thereon, and prove exceedingly useful to the people of Maine. Second. That Rouse's Point, in Lake Champlain, and the lands heretofore supposed to be within the limits of New Hampshire, Vermont, and New York, but which a correct ascertainment of the 45th parallel of latitude shows to be in Canada, should be surrendered to the United States.

It is probable, also, that the disputed line of boundary in Lake Superior might be so adjusted as to leave a disputed island within the United States.

These cessions on the part of England would enure partly to the benefit of the states of New Hampshire, Vermont, and New York, but principally to the United States. The consideration on the part of England, for making them, would be the manner agreed upon for adjusting the eastern boundary. The price of the cession, therefore, whatever it might be, would in fairness belong to the two states interested in the manner of that adjustment.

Under the influence of these considerations, I am authorized to say, that if the commissioners of the two states assent to the line as described in the accompanying paper, the United States will undertake to pay to these states the sum of two hundred and fifty thousand dollars, to be divided between them in equal moieties; and also to undertake for the settlement and pay-

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ment of the expenses incurred by those states for the maintenance of the civil posse, and also for a survey which it was found necessary to make.

The line suggested, with the compensations and equivalents which have been stated, is now submitted for your consideration. That it is all which might have been hoped for, looking to the strength of the American claim, can hardly be said. But, as the settlement of a controversy of such duration is a matter of high importance, as equivalents of undoubted value are offered, as longer postponement and delay would lead to further inconvenience, and to the incurring of further expenses, and as no better occasion, or, perhaps, any other occasion, for settling the boundary by agreement, and on the principle of equivalents, is ever likely to present itself, the government of the United States hopes that the commissioners of the two states will find it to be consistent with their duty to assent to the line proposed, and to the terms and conditions attending the proposition.

The President has felt the deepest anxiety for an amicable settlement of the question in a manner honorable to the country, and such as should preserve the rights and interests of the states concerned. From the moment of the announcement of Lord Ashburton's mission, he has sedulously endeavored to pursue a course the most respectful toward the states, and the most useful to their interests, as well as the most becoming to the character and dignity of the government. He will be happy if the result shall be such as shall satisfy Maine and Massachusetts, as well as the rest of the country. With these sentiments on the part of the President, and with the conviction that no more advantageous arrangement can be made, the subject is now referred to the grave deliberation of the commissioners.

I have the honor to be, with great respect,

Your obedient servant,

DANIEL WEBSTER.

The Hon. the COMMISSIONERS OF MAINE.

Lord Ashburton to Mr. Webster.

WASHINGTON, *July* 16, 1842.

SIR,—There is a further question of disputed boundary between Great Britain and the United States, called the northwest boundary, about which we have had some conferences; and I now proceed to state the terms which I am ready to agree to for the settlement of this difference. As the principal object in dispute is to be given up by Great Britain, I trust, sir, that you will here again recognize the spirit of friendly conciliation which has guided my government in disposing of these questions.

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I have already sufficiently discussed with you the boundaries between her majesty's provinces and the United States, from the monument at the head of the River St. Croix to the monument on the River St. Lawrence, near the village of St. Regis.

The commissioners under the sixth article of the Treaty of Ghent succeeded in continuing this boundary from St. Regis through the St. Lawrence and the great northern lakes, up to a point in the channel between Lake Huron and Lake Superior.

A further continuation of this boundary, from this point through Lake Superior to the Lake of the Woods, was confided to the same commissioners under the seventh article of the Treaty of Ghent, but they were, unfortunately, unable to agree, and have consequently left this portion of the boundary undetermined. Its final settlement has been much desired by both governments, and urgently pressed by communications from Mr. Secretary Forsyth to Mr. Fox, in 1839 and 1840.

What I have now to propose can not, I feel assured, be otherwise than satisfactory for this purpose.

The commissioners who failed in their endeavors to make this settlement differed on two points:

First. As to the appropriation of an island called St. George's Island, lying in the water communication between Lake Huron and Lake Superior; and,

Secondly. As to the boundary through the water communications from Lake Superior to the Lake of the Woods.

The first point I am ready to give up to you, and you are no doubt aware that it is the only object of any real value in this controversy. The Island of St. George is reported to contain 25,920 acres of very fertile land; but, the other things connected with these boundaries being satisfactorily arranged, a line shall be drawn so as to throw this island within the limits of the United States.

In considering the second point, it really appears of little importance to either party how the line be determined through the wild country between Lake Superior and the Lake of the Woods, but it is important that some line should be fixed and known.

The American commissioner asked for the line from Lake Superior up the River Kamanastiguia to the lake called Dog Lake, which he supposed to be the same as that called Long Lake in the treaties, thence through Sturgeon Lake to the Lac la Pluie, to that point where the two lines assumed by the commissioners again meet.

The British commissioner, on the other hand, contended for a line from the southwestern extremity, at a point called Le Fond du Lac, to the middle of the mouth of the estuary, or lake,

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of St. Louis River, thence up that river through Vermilion River to Lac la Pluie.

Attempts were made to compromise these differences, but they failed, apparently more from neither party being willing to give up the Island of St. George, than from much importance being attached to any other part of the case.

Upon the line from Lake Superior to the Lake of the Woods, both commissioners agreed to abandon their respective claims, and to adopt a middle course, for which the American commissioner admitted that there was some ground of preference. This was from Pigeon River, a point between Kamanastiguia and the Fond du Lac; and although there were differences as to the precise point near the mouth of Pigeon River where the line should begin, neither party seemed to have attached much importance to this part of the subject.

I would propose that the line be taken from a point about six miles south of Pigeon River, where the Grand Portage commences on the lake, and continued along the line of said Portage, alternately by land and water, to Lac la Pluie, the existing route by land and by water remaining common to both parties. This line has the advantage of being known, and attended with no doubt or uncertainty in running it.

In making the important concession on this boundary of the Isle of St. George, I must attach a condition to it of accommodation, which experience has proved to be necessary in the navigation of the great waters which bound the two countries —an accommodation which can, I apprehend, be no possible inconvenience to either. This was asked by the British commissioner in the course of the attempts of compromise above alluded to; but nothing was done, because he was not then prepared, as I am now, to yield the property and sovereignty of St. George's Island.

The first of these two cases is at the head of Lake St. Clair, where the river of that name empties into it from Lake Huron. It is represented that the channel bordering the United States coast in this part is not only the best for navigation, but, with some winds, is the only serviceable passage. I do not know that, under such circumstances, the passage of a British vessel would be refused; but, on a final settlement of boundaries, it is desirable to stipulate for what the commissioners would probably have settled had the facts been known to them.

The other case, of nearly the same description, occurs on the St. Lawrence, some miles above the boundary at St. Regis. In distributing the islands of the river by the commissioners, Barnhart's Island and the Long Sault Islands were assigned to America. This part of the river has very formidable rapids, and the only safe passage is on the southern or American side,

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between those islands and the main-land. We want a clause in our present treaty to say that, for a short distance, viz., from the upper end of Upper Long Sault Island to the lower end of Barnhart's Island, the several channels of the river shall be used in common by the boatmen of the two countries.

I am not aware that these very reasonable demands are likely to meet with any objection, especially where the United States will have surrendered to them all that is essential in the boundary I have now to propose to you.

I beg you will be assured, sir, of my unfeigned and distinguished consideration.

ASHBURTON.

Hon. DANIEL WEBSTER, &c., &c., &c.

Commissioners of Massachusetts to Mr. Webster.

WASHINGTON, *July* 20, 1842.

SIR,—We have the honor to acknowledge the receipt of your communication of the 15th of July, addressed to us as commissioners of Massachusetts, authorized to act in her behalf in the settlement of the controversy concerning the northeastern boundary of the United States. The proposal therein presented for our assent, in behalf of the government we represent, to the establishment of the conventional boundary indicated in your communication, and upon the terms and equivalents therein set forth, has received our faithful consideration, and, without further delay, we submit the following reply:

After the many interviews which we have had the pleasure to hold with you during the progress of the negotiation, which is drawing to its close, it is unnecessary for us to express our full concurrence in the sentiment that the line suggested, with its compensations and equivalents, is not all which might have been hoped for, in view of the strength of the American claim to the territory in dispute. But inasmuch as in the progress of the negotiation, conducted with great deliberation, every proposition has been put forth which any party, in whatever manner and to whatever extent it may be interested, has been disposed to submit for consideration and adoption, and the ultimate point has been reached at which negotiation must result in a compact, or the interruption of further effort for its accomplishment, we proceed to discharge the remaining duty which is devolved upon us.

We are fully aware of the importance of the act that we are called upon to perform. It is not less than the relinquishment, by the commonwealth of Massachusetts, of territory which she has always claimed to be a part of her possessions, and to which she believes she has a clear and indisputable title. So strong is the conviction of the right of Massachusetts and Maine

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to the undisturbed enjoyment of the land constituting what is called the disputed territory, by force of the treaty which terminated the war of the Revolution, that she would prefer an appeal to the same arbitrament by which the acknowledgment of her right was originally obtained, to a surrender, without just equivalents, of any portion of that territory. Still she is aware that the government and people of the United States desire to preserve peace and friendly relations with other nations, so long as they can be maintained with honor, by concessions which not a just policy alone, but that which is liberal and magnanimous, may require. She partakes of the common spirit, and its influence pervades all her action throughout this negotiation.

There are other considerations of weight in the decision of this question. Though the title of Massachusetts to the lands in dispute is believed to be perfect, it is not to be overlooked that they have been the subject of controversy through many years; that attempts, by negotiation and through the intervention of an umpire, have been unsuccessfully made to extinguish a conflicting claim; and that the nations which are now seeking by renewed negotiations to put a period to the protracted strife, while desiring peace, have been brought to the verge of destructive war, through dissensions incident to a disputed boundary. Should this negotiation fail of a successful issue, the alternative offered is a renewed submission of our rights to the determination of others. Past experience enforces the belief that other years must elapse, and great inconvenience be felt, before a decision can be obtained; and the same monitor suggests the obvious truth, that however the title of Massachusetts and Maine, and of the United States, may be firmly established in justice, it is not equally certain that it would be confirmed by the tribunal, from whose decision, whatever it might be, no appeal could honorably be taken.

But the considerations which must powerfully impel the state of Massachusetts to acquiesce in the terms of a treaty that your communication indicates are, the known desire of the people of the United States for a speedy settlement of the vexed question of the boundary, and the request of the general government, expressed through its constitutional organs, that Massachusetts would yield her consent to an arrangement which that government deems to be reasonable. The state we have the honor to represent would be slow to disappoint the hopes of the nation, and reluctant to reject terms which the government of the United States urges her to accept, as being compatible, in the estimation of that government, with the interests of the state, and essential to the complete adjustment of difficulties which the security of national peace demands.

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Whether the national boundary suggested by you be suitable or unsuitable, whether the compensations that Great Britain offers to the United States for the territory conceded to her be adequate or inadequate, and whether the treaty which shall be effected shall be honorable to the country or incompatible with its rights and dignity, are questions not for Massachusetts, but for the general government, upon its responsibility to the whole country, to decide. It is for the state to determine for what equivalents she will relinquish to the United States her interests in certain lands in the disputed territory, so that they may be made available to the government of the United States in the establishment of the northeastern boundary, and in a general settlement of all matters in controversy between Great Britain and the United States. In this view of the subject, and with the understanding that by the words "the nearest point of the highlands," in your description of the proposed line of boundary, is meant the nearest point of the crest of the highlands; that the right to the free navigation of the River St. John shall include the right to the free transportation thereupon of all products of the soil as well as of the forest; and that the pecuniary compensation to be paid by the Federal government to the state of Massachusetts shall be increased to the sum of one hundred and fifty thousand dollars, the state of Massachusetts, through her commissioners, hereby relinquishes to the United States her interest in the lands which will be excluded from the dominion of the United States by the establishment of the boundary aforesaid.

We have the honor to be, with great respect, your obedient servants,

ABBOT LAWRENCE,
JOHN MILLS,
CHARLES ALLEN.

HON. DANIEL WEBSTER, *Secretary of State.*

The Maine Commissioners to Mr. Webster.

WASHINGTON, *July* 22, 1842.

SIR,—The undersigned, commissioners of the state of Maine on the subject of the northeastern boundary, have the honor to acknowledge the receipt of your note, addressed to them under date of the 15th instant, with inclosures therein referred to. The proposition first submitted by the special minister of Great Britain, on the subject of the boundary, having been disagreed to, and the proposition made on the part of the United States, with the assent of the commissioners of Maine and Massachusetts, having been rejected as inadmissible, coupled with an expression of surprise that it should have been made; and Lord Ashburton, in the same communication, having in-

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timated a preference for conference rather than correspondence, and having omitted in his note to make any new proposition, except a qualified withdrawal of a part of his former one, we learn from your note that you "have had full and frequent conferences with him respecting the northeastern boundary," and that you "believe you understand what is practicable to be done on that subject, so far as he (Lord Ashburton) is concerned." We also learn, that "in these conferences he has made no positive or binding proposition, thinking, perhaps, it would be more desirable, under present circumstances, that such a proposition should proceed from the side of the United States;" but that you have reason to believe that he would agree to a line of boundary such as is described in the paper accompanying your note (marked B); and, also, that you entertain the conviction "that no more advantageous arrangement can be made;" and, with this conviction, you refer the subject to the grave deliberation of the commissioners.

Regarding this as substantially a proposition on the part of the United States, with the knowledge and assent of Great Britain, and as the one most favorable to us which, under any circumstances, the latter government would either offer or accept, the undersigned have not failed to bestow upon it the grave deliberation and consideration which its nature and importance, and their own responsible position, demand. If the result of that deliberation should not fully justify the expressed hopes or meet the expectations and views of the government of the United States, we beg you to be assured that such failure will be the result of their firm convictions of duty to the state they represent, and will not arise from any want of an anxious desire, on their part, to bring the controversy to an amicable, just, and honorable termination. In coming to this consideration, they have not been unmindful that the state of Maine, with the firmest conviction of her absolute right to the whole territory drawn into controversy, and sustained, as she has been, by the unanimous concurrence of her sister states, and of the government of the Union, repeatedly expressed and cordially given, and without a wavering doubt as to the perfect practicability of marking the treaty line upon the face of the earth, according to her claim, has yet at all times manifested a spirit of forbearance and patience under what she could not but deem unfounded pretensions, and unwarrantable delays, and irritating encroachments. In the midst of all the provocations to resistance, and to the assertion and maintenance of her extreme rights, she has never forgotten that she is a member of the Union, and she has endeavored to deserve the respect, sympathy, and co-operation of her sister states, by pursuing a course equally removed from pusillanimity and

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rashness, and by maintaining her difficult position in a spirit that would forbear much for peace, but would yield nothing through fear. At all times, and under all circumstances, she has been ready and anxious to bring the controversy to a close upon terms honorable and equitable, and to unite in any proper scheme to effect that object. In this spirit, and with these convictions, Maine instantly and cheerfully acceded to the proposal of the general government, made through you, to appoint commissioners.

That no obstacle might be interposed to the successful issue of this negotiation, her Legislature gave to her commissioners ample and unlimited powers, which, but for the presumed necessity of the case, her people would be slow to yield to any functionaries. Her commissioners, thus appointed and thus empowered, assumed the duties imposed upon them in the spirit and with the views of the government and people of Maine. They came to the negotiation with a firm conviction of her rights, but with a disposition and determination to meet a conciliatory proposition for a conventional line in a similar spirit, and to yield, for any reasonable equivalent, all that they presumed would be asked or desired by the other party. They, with the other citizens of Maine, were not unapprised of the fact so often alluded to in our former communications, that England had long been anxious to obtain the undisputed possession of that portion of the territory which would enable her to maintain a direct and uninterrupted communication between her provinces. So far as they could learn from any source, this was the only professed object she had in view, and the only one which had been regarded as in contemplation.

With this understanding, the undersigned at once decided to yield, upon the most liberal terms, this long-sought convenience; and they indulged the confident expectation that such a concession would at once meet all the wants and wishes of the English government, and bring the mission to a speedy and satisfactory close. When, therefore, we were met at the outset by a proposition which required the cession, on our part, of all the territory north of the St. John's River, and enough of the territory on the south to include the Madawaska settlement, extending at least fifty miles up that river, with no other equivalents to us than the limited right to float timber down that river, and to the United States the small tracts adjacent to the 45th parallel of latitude in other states, we could not but express our regret to be thus, as it were, repelled. But regarding this rather as the extreme limit of a claim subject, notwithstanding the strong language of Lord Ashburton, to be restrained and limited, we deemed it proper, in our communication of the 16th instant, after declining to accede to the

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proposition, in conjunction with the commissioners of Massachusetts, to point out and offer a conventional line of boundary as therein specified. In fixing on this line, we were mainly anxious to select such a one as should at once and pre-eminently give to Great Britain all that was necessary for her understood object, and to preserve to Maine the remainder of her territory. To accomplish this object, we departed from the river to secure the unobstructed use of the accustomed way from Quebec to Halifax. We are not aware that any objection has been made from any quarter to this line, as not giving up to Great Britain all that she needed, or could reasonably ask, for the above purpose. And although Lord Ashburton did not deem it necessary to "examine the line (proposed) in its precise details," or to look at a map on which it could most readily be traced, and although he has seen fit to say that he was "quite at a loss to account for such a proposal," yet he has not intimated that the line suggested fails in any respect to meet the object we had in view, and which we frankly and readily avowed. It is well known to you, sir, that we had determined upon no such inflexible adherence to that exact demarkation as would have prevented us from changing it, upon any reasonable evidence that it did not in every respect meet the requirements of the above stated proposition in relation to a perfect line of communication. But believing then, as we do now, that it did thus meet all these requirements, and although it was, as we feel bound to say, the general and confident expectation of the people of Maine, that any relinquishment on our part of jurisdiction and territory would be, *in part* at least, compensated from that strip of contiguous territory on the west bank of the St. John's, yet, when we were solemnly assured that no such cession could be made under his lordship's instructions, we forbore to press for this reasonable and just exchange, and contented ourselves with accepting the limited right of navigation of the river, as the only equivalent from Great Britain for the territory and jurisdiction we offered to surrender; and, as you will remark, we offered not merely a right of way on land for a similar easement on the water, but the entire and absolute title to the land and jurisdiction of the large tract north and east of the line specified. It can not be denied that it preserves to us a frontier in a forest almost impenetrable on the north, which would defend itself by its own natural character, and that if any thing should be deducted from the agricultural value of that portion beyond the Madawaska settlements, on account of its ruggedness and its want of attraction to settlers, much may justly be added to its value as a boundary between the two nations.

The value of this tract to Great Britain, both in a civil and

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military point of view, can not be overlooked. It gives her the much-coveted route for the movement of troops in war, and her mails and passengers in peace, and is most particularly important in case of renewed outbreaks in her North American colonies. The assumption of jurisdiction in the Madawaska settlement, and the pertinacity with which it has been maintained, are practical evidence of the value attached to the tract by the government of her Britannic majesty.

We have alluded to these views of the value and importance of this territory not with any design of expressing our regret that we have thus offered it, but to show that we are fully aware of all these views and circumstances affecting the question, and that we duly appreciate the far-seeing sagacity and prudence of those British statesmen who so early attempted to secure it as a cession, by negotiation, and the suggestion of equivalents.

The answer of Lord Ashburton to your note of the 8th instant contained a distinct rejection of our offer, with a substantial withdrawal of his claim to any territory south of the River St. John, but not modifying the claim for the relinquishment, on the part of Maine and the United States, of all north of that river. Our views in reference to many of the topics in his lordship's reply we have had the honor heretofore to communicate to you in our note of the 16th instant; and to that answer we would now refer, as forming an important part of this negotiation, and as containing our refusal of the line indicated. We are now called upon to consider the final proposition made by or through the government of the United States for our consideration and acceptance. The line indicated may be shortly defined as the line recommended by the King of the Netherlands, and an addition thereto of a strip of land at the base of the highlands, running to the source of the southwest branch of the St. John. The examination and consideration of all other lines, which might better meet our views and objects, have been precluded by the declaration, and other plenary evidence we have, that the line specified in your communication is the most advantageous that can be offered to us; and that no one of less extent, or yielding, in fact, less to the other party, can be deemed admissible. We are, therefore, brought to the single and simple consideration of the question whether we can, consistently with our views of our duty to the state we represent, accept the proposition submitted by you.

So far as any claim is interposed, based upon a supposed equity arising from the recommendation of the King of the Netherlands, we have only to refer to our former note for our views on that topic. We have now only to add, that we came to this conference untrammeled and free, to see if, in a spirit

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of amity and equity, we could not find and agree upon some new line which, while it yielded all that was needed by one party, might fairly be the motive and ground-work for equivalent territory or rights granted to the other; and that we can not make any admission or consent to any proposition which would not revive, but put vitality and power into that which, up to this time, has never possessed either. We base our whole action on grounds entirely independent of that advice of the arbiter.

It may possibly be intimated in this connection, as it has more than once been heretofore, that the commissioners of Maine and the people of that state are disposed to regard the whole territory as clearly falling within their rightful limits, and are not willing to consider the question as one in doubt and dispute, and, therefore, one to be settled as if each party had nearly or quite equal claims. Certainly, sir, the people and government of Maine do not deny that the question has been drawn into dispute. They have had too many and too recent painful evidences of that fact to allow such a doubt, however much at a loss they may be to perceive any just or tenable grounds on which the adversary claim is based. For years they have borne and forborne, and struggled to maintain their rights, in a peaceable and yet unflinching spirit, against what appeared to them injustice from abroad and neglect at home. But they have yet to learn that the mere fact that an adverse claim is made and persisted in, and maintained by ingenuity and ability for a series of years, and increasing in extent and varying its grounds as years roll on, is to be regarded as a reason why courtesy should require, in opposition to the fact, a relinquishment of the plain, explicit, and sincere language of perfect conviction and unwavering confidence, or that a continued, adverse, and resisted claim may yet, by mere lapse of time and reiteration, ripen into a right. But we desire it to be distinctly remembered that, in this attempt to negotiate for a conventional line, Maine has not insisted, or even requested, that any formal or virtual admission of her title to the whole territory should be a condition preliminary to a settlement. We hold, and we claim, the right to express at all times, and in all suitable places, our opinion of the perfect right of Maine to the whole territory; but we have never assumed it as a point of honor that our adversary should acknowledge it. Indeed, we have endeavored to view the subject rather in reference to a settlement, on even hard terms for us, than to dwell on the strong aspect of the case, when we look at the naked question of our right and title under the treaty. It could hardly be expected, however, that we should silently, and thus virtually, acquiesce in any assumption that

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our claim was unsustained, and that "the treaty line was not executable." On this point we expressed ourselves fully in a former note.

In returning to the direct consideration of the last proposition, and the terms and conditions attending it, in justice to ourselves and our state, we feel bound to declare, and we confidently appeal to you, sir, in confirmation of the declaration, that this negotiation has been conducted, on our part, with no mercenary views, and with no design to extort unreasonable equivalents or extravagant compensation. The state of Maine has always felt an insuperable repugnance to parting with any portion even of her disputed territory for mere pecuniary recompense from adverse claimants. She comes here for no mere bargain for the sale of acres, in the spirit or with the arts of traffic. Her commissioners have been much less anxious to secure benefit and recompense than to preserve the state from unnecessary curtailment and dismemberment. The proposition we made is evidence of the fact. We have heretofore expressed some opinions of the mutual character of the benefits to each party from the free navigation of the St. John. Without entering, however, upon the particular consideration of the terms and conditions, which we have not thought it necessary to do, we distinctly state that our great repugnance to the line is based upon the extent of territory required to be yielded. We may, however, in passing, remark that all the pecuniary offers contained in your note, most liberally construed, would scarcely recompense and repay to Maine the amount of money and interest which she has actually expended in defending and protecting the territory from wrongs arising and threatened by reason of its condition and disputed ground.

Considering, then, this proposition as involving the surrender of more territory than the avowed objects of England require, as removing our landmarks from the well-known and well-defined boundary of the treaty of 1783, the crest of the highlands, besides insisting upon the line of the arbiter in its full extent, we feel bound to say, after the most careful and anxious consideration, that we can not bring our minds to the conviction that the proposal is such as Maine had a right to expect.

But we are not unaware of the expectations which have been and still are entertained of a favorable issue to this negotiation by the government and people of this country, and the great disappointment which would be felt and expressed at its failure. Nor are we unmindful of the future, warned as we have been by the past, that any attempts to determine the line by arbitration may be either fruitless, or with a result more to be deplored.

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We are now given to understand that the executive of the United States, representing the sovereignty of the Union, assents to the proposal, and that this department of the government, at least, is anxious for its acceptance, as, in its view, most expedient for the general good.

The commissioners of Massachusetts have already given their assent on behalf of that commonwealth. Thus situated, the commissioners of Maine, invoking the spirit of attachment and patriotic devotion of their state to the Union, and being willing to yield to the deliberate convictions of her sister states as to the path of duty, and to interpose no obstacles to an adjustment which the general judgment of the nation shall pronounce as honorable and expedient, even if that judgment shall lead to a surrender of a portion of the birth-right of the people of their state, and prized by them because it is their birth-right, have determined to overcome their objections to the proposal so far as to say, that if, upon mature consideration, the Senate of the United States shall advise and consent to the ratification of a treaty, corresponding in its terms with your proposal, and with the conditions in our memorandum accompanying this note (marked A), and identified by our signatures, they, by virtue of the power vested in them by the resolves of the Legislature of Maine, give the assent of that state to such conventional line, with the terms, conditions, and equivalents herein mentioned.

We have the honor to be, sir, with high respect, your obedient servants,

EDWARD KAVANAGH,
EDWARD KENT,
JOHN OTIS,
WILLIAM P. PREBLE.

HON. DANIEL WEBSTER, &c, &c., &c.

A.

The commissioners of Maine request that the following provisions, or the substance thereof, shall be incorporated into the proposed treaty, should one be agreed on:

1st. That the amount of "the disputed territory fund" (so called) received by the authorities of New Brunswick, for timber cut on the disputed territory, shall be paid over to the United States, for the use of Maine and Massachusetts, in full, and a particular account rendered; or a gross sum, to be agreed upon by the commissioners of Maine and Massachusetts, shall be paid by Great Britain as a settlement of that fund; and that all claims, bonds, and securities taken for timber cut upon the territory be transferred to the authorities of Maine and Massachusetts.

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2d. That all grants of land within that portion of the disputed territory conceded to Great Britain, made by Maine and Massachusetts, or either of them, shall be confirmed; and all equitable possessory titles shall be quieted, to those who possess the claims; and we assent to a reciprocal provision for the benefit of settlers falling within the limits of Maine. And we trust that the voluntary suggestion of the British minister in regard to John Baker, and any others, if there be any, similarly situated, will be carried into effect, so as to secure their rights.

3d. That the right of free navigation of the St. John, as set forth in the proposition of Mr. Webster, on the part of the United States, shall extend to and include the products of the soil, in the same manner as the products of the forest; and that no toll, tax, or duty be levied upon timber coming from the territory of Maine.

EDWARD KAVANAGH,
EDWARD KENT,
JOHN OTIS,
WILLIAM P. PREBLE.

Mr. Webster to Lord Ashburton.

DEPARTMENT OF STATE, *Washington, July 27, 1842.*

MY LORD,—I have now to propose to your lordship a line of division embracing the disputed portions of the boundary between the United States and the British provinces of New Brunswick and the Canadas, with its considerations and equivalents, such as conforms, I believe, in substance, to the result of the many conferences and discussions which have taken place between us.

The acknowledged territories of the United States and England join upon each other from the Atlantic Ocean to the eastern foot of the Rocky Mountains, a distance of more than three thousand miles. From the ocean to the source of the St. Croix the line of division has been ascertained and fixed by agreement: from the source of the St. Croix to a point near St. Regis, on the River St. Lawrence, it may be considered as unsettled or controverted; from this last-mentioned point, along the St. Lawrence and through the lakes, it is settled, until it reaches the water communication between Lake Huron and Lake Superior. At this point the commissioners, under the seventh article of the Treaty of Ghent, found a subject of disagreement which they could not overcome, in deciding up which branch or channel the line should proceed, till it should reach a point in the middle of St. Mary's River, about one mile above St. George's or Sugar Island.

From the middle of the water communication between the

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two lakes, at the point last mentioned, the commissioners extended the line through the remaining part of that water communication, and across Lake Superior, to a point north of Ile Royale; but they could not agree in what direction the line should run from this last-mentioned point, nor where it should leave Lake Superior, nor how it should be extended to the Rainy Lake, or *Lac la Pluie.* From this last-mentioned lake they agreed on the line to the northwesternmost point of the Lake of the Woods, which they found to be in latitude 49 deg. 23 min. 55 sec. The line extends, according to existing treaties, due south from this point to the 49th parallel of north latitude, and by that parallel to the Rocky Mountains.

Not being able to agree upon the whole line, the commissioners, under the seventh article, did not make any joint report to their respective governments. So far as they agreed on any part of the line, that part has been considered settled; but it may be well to give validity to these portions of the line by a treaty.

To complete the boundary line, therefore, and to remove all doubts and disputes, it is necessary for the two governments to come to an agreement on three points:

1st. What shall be the line on the northeastern and northern limits of the United States, from the St. Croix to the St. Lawrence? This is by far the most important and difficult of the subjects, and involves the principal questions of equivalents and compensations.

2d. What shall be the course of the boundary from the point where the commissioners, under the sixth article of the Treaty of Ghent, terminated their labors, to wit: a point in the Neebish Channel, near Muddy Lake, in the water communication between Lake Huron and Lake Superior, to a point in the middle of St. Mary's River, one mile above Sugar Island? This question is important, as it involves the ownership of that island.

3d. What shall be the line from the point north of Ile Royale, in Lake Superior, to which the commissioners of the two governments arrived by agreement, to the Rainy Lake; and also to confirm those parts of the line to which the said commissioners agreed?

Besides agreeing upon the line of division through which these controverted portions of the boundary pass, you have suggested also, as the proposed settlement proceeds upon the ground of compromise and equivalents, that boats belonging to her majesty's subjects may pass the falls of the Long Saut, in the St. Lawrence, on either side of the Long Saut Islands, and that the passages between the islands lying at or near the junction of the River St. Clair, with the lake of that name,

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shall be severally free and open to the vessels of both countries. There appears no reasonable objection to what is requested in these particulars; and, on the part of the United States it is desirable that their vessels, in proceeding from Lake Erie into the Detroit River, should have the privilege of passing between Bois Blanc, an island belonging to England, and the Canadian shore, the deeper and better channel being on that side.

The line, then, now proposed to be agreed to may be thus described:

Beginning at the monument at the source of the River St. Croix, as designated and agreed to by the commissioners, under the fifth article of the treaty of 1794, between the governments of the United States and Great Britain; thence north, following the exploring line run and marked by the surveyors of the two governments in the years 1817 and 1818, under the fifth article of the Treaty of Ghent, to its intersection with the River St. John, and to the middle of the channel thereof; thence up the middle of the main channel of the said River St. John to the mouth of the River St. Francis; thence up the middle of the channel of the said River St. Francis, and of the lakes through which it flows, to the outlet of the Lake Pohenagamook; thence southwesterly, in a straight line, to a point on the northwest branch of the River St. John, which point shall be ten miles distant from the main branch of the St. John, in a straight line, and in the nearest direction; but if the said point shall be found to be less than seven miles from the nearest point of the summit, or crest, of the highlands that divide those rivers which empty themselves into the River St. Lawrence from those which fall into the River St. John, then the said point shall be made to recede down the said river to a point seven miles, in a straight line, from the said summit or crest; thence, in a straight line, in a course about south, eight degrees west, to the point where the parallel of latitude of 46 degrees 25 minutes north intersects the southwest branch of the St. John; thence southerly, by the said branch, to the source thereof in the highlands at the Metjarmette Portage; thence down along the said highlands which divide the waters which empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the head of Hall's stream; thence down the middle of said stream, till the line thus run intersects the old line of boundary surveyed and marked by Valentine and Collins, previously to the year 1774, as the 45th degree of north latitude, and which has been known and understood to be the line of actual division between the states of New York and Vermont on one side, and the British province of Canada on the other; and from said point of inter-

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section, west, along the said dividing line, as heretofore known and understood, to the Iroquois, or St. Lawrence River; and from the place where the joint commissioners terminated their labors under the sixth article of the Treaty of Ghent, to wit: at a point in the Neebish Channel, near Muddy Lake, the line shall run into and along the ship channel between St. Joseph's and St. Tammany islands, to the division of the channel at or near the head of St. Joseph's Island; thence, turning eastwardly and northwardly, around the lower end of St. Georges', or Sugar Island, and following the middle of the channel which divides St. George's from St. Joseph's Island; thence up the east Neebish Channel nearest to St. George's Island, through the middle of Lake George; thence west of Jonas Island, into St. Mary's River, to a point in the middle of that river about one mile above St. George's, or Sugar Island, so as to appropriate and assign the said island to the United States; thence, adopting the line traced on the maps by the commissioners, through the River St. Mary and Lake Superior, to a point north of Ile Royale, in said lake, one hundred yards to the north and east of Ile Chapeau, which last-mentioned island lies near the northeastern point of Ile Royale, where the line marked by the commissioners terminates; and from the last-mentioned point, southwesterly, through the middle of the sound, between Ile Royale and the northwestern main land, to the mouth of Pigeon River, and up the said river to and through the north and south Fowl lakes, to the lakes of the height of land between Lake Superior and the Lake of the Woods; thence along the water communication to Lake Saisaginaga, and through that lake; thence to and through Cypress Lake, Lac du Bois Blanc, Lac la Croix, Little Vermilion Lake, and Lake Namecan, and through the several smaller lakes, straits, or streams connecting the lakes here mentioned, to that point in Lac la Pluie, or Rainy Lake, at the Chaudiere Falls, from which the commissioners traced the line, to the most northwestern point of the Lake of the Woods; thence along the said line to the said most northwestern point, being in latitude 49 degrees, 23 minutes, 55 seconds north, and in longitude 95 degrees, 14 minutes, 38 seconds west from the observatory at Greenwich; thence, according to existing treaties, the line extends due south to its intersection with the 49th parallel of north latitude, and along that parallel to the Rocky Mountains. It being understood that all the water communications, and all the usual portages, along the line from Lake Superior to the Lake of the Woods, and also Grand Portage from the shore of Lake Superior to the Pigeon River, as now actually used, shall be free and open to the use of the subjects and citizens of both countries.

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It is desirable to follow the description and the exact line of the original treaty as far as practicable. There is reason to think that "Long Lake," mentioned in the treaty of 1783, meant merely the estuary of the Pigeon River, as no lake called "Long Lake," or any other water strictly conforming to the idea of a lake, is found in that quarter. This opinion is strengthened by the fact that the words of the treaty would seem to imply that the water intended as "Long Lake" was immediately joining Lake Superior. In one respect, an exact compliance with the words of the treaty is not practicable. There is no continuous water communication between Lake Superior and the Lake of the Woods, as the Lake of the Woods is known to discharge its waters through the Red River of the north into Hudson's Bay. The dividing height or ridge between the eastern sources of the tributaries of the Lake of the Woods and the western sources of Pigeon River appears, by authentic maps, to be distant about forty miles from the mouth of Pigeon River, on the shore of Lake Superior.

It is not improbable that, in the imperfection of knowledge which then existed of those remote countries, and, perhaps, misled by Mitchell's Map, the negotiators of the treaty of 1783 supposed the Lake of the Woods to discharge its waters into Lake Superior. The broken and difficult nature of the water communication from Lake Superior to the Lake of the Woods renders numerous portages necessary; and it is right that these water communications and these portages should make a common highway, where necessary, for the use of the subjects and citizens of both governments.

When the proposed line shall be properly described in the treaty, the grant by England of the right to use the waters of the River St. John for the purpose of transporting to the mouth of that river all the timber and agricultural products raised in Maine, on the waters of the St. John, or any of its tributaries, without subjection to any discriminating toll, duty, or disability, is to be inserted. Provision should also be made for quieting and confirming the titles of all persons having claims to lands on either side of the line, whether such titles be perfect or inchoate only, and to the same extent in which they would have been confirmed by their respective governments had no change taken place. What has been agreed to, also, in respect to the common use of certain passages in the rivers and lakes, as already stated, must be made matter of regular stipulation.

Your lordship is also informed, by the correspondence which formerly took place between the two governments, that there is a fund arising from the sale of timber, concerning which

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fund an understanding was had some years ago. It will be expedient to provide, by the treaty, that this arrangement shall be carried into effect.

A proper article will be necessary to provide for the creation of a commission to run and mark some parts of the line between Maine and the British provinces.

These several objects appear to me to embrace all respecting the boundary line, and its equivalents, which the treaty needs to contain as matters of stipulation between the United States and England.

I have the honor to be, with high consideration, your lordship's most obedient servant, DANIEL WEBSTER.

Lord ASHBURTON, &c., &c., &c.

Lord Ashburton to Mr. Webster.

WASHINGTON, *July* 29, 1842.

SIR,—I have attentively considered the statements contained in the letter you did me the honor of addressing me on the 27th of this month, of the terms agreed to for the settlement of boundaries between her majesty's provinces and the United States, being the final result of the many conferences we have had on this subject. This settlement appears substantially correct in all its parts, and we may now proceed, without further delay, to draw up the treaty. Several of the articles for this purpose are already prepared and agreed, and our most convenient course will be to take and consider them singly. I would beg leave to recommend that, as we have excellent charts of the country through which the boundary which failed of being settled by the commissioners under the seventh article of the Treaty of Ghent is partially marked, it would be advisable to make good the delineation on those charts, which would spare to both parties the unnecessary expense of new commissioners and a new survey. In this case, the only commission required would be to run the line on the boundary of Maine.

The stipulations for the greater facility of the navigation of the River St. Lawrence, and of two passages between the Upper Lakes, appear evidently desirable for general accommodation; and I can not refuse the reciprocal claim made by you to render common the passage from Lake Erie into the Detroit River. This must be done by declaring the several passages in those parts free to both parties.

I should remark, also, that the free use of the navigation of the Long Sault passage on the St. Lawrence must be extended to below Barnhart's Island, for the purpose of clearing those rapids.

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I beg leave to repeat to you, sir, the assurances of my most distinguished consideration. ASHBURTON.

Hon. DANIEL WEBSTER, &c., &c., &c.

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Lord Ashburton to Mr. Webster.

WASHINGTON, *August* 9, 1842.

SIR,—It appears desirable that some explanation between us should be recorded by correspondence respecting the fifth article of the treaty signed by us this day for the settlement of boundaries between Great Britain and the United States.

By that article of the treaty it is stipulated that certain payments shall be made by the government of the United Sates to the states of Maine and Massachusetts. It has, of course, been understood that my negotiations have been with the government of the United States, and the introduction of terms of agreement between the general government and the states would have been irregular and inadmissible, if it had not been deemed expedient to bring the whole of these transactions within the purview of the treaty. There may not be wanting analogous cases to justify this proceeding; but it seems proper that I should have confirmed by you that my government incurs no responsibility for these engagements, of the precise nature and object of which I am uninformed, nor have I considered it necessary to make inquiry concerning them.

I beg, sir, to renew to you the assurances of my high consideration. ASHBURTON.

Hon. DANIEL WEBSTER, &c., &c., &c.

Mr. Webster to Lord Ashburton.

DEPARTMENT OF STATE, *Washington*, *August* 9, 1842.

MY LORD,—I have the honor to acknowledge the receipt of your note of the 9th of August with respect to the object and intention of the fifth article of the treaty. What you say in regard to that subject is quite correct. It purports to contain no stipulation on the part of Great Britain, nor is any responsibility supposed to be incurred by it on the part of your government.

I renew, my lord, the assurances of my distinguished consideration. DANIEL WEBSTER.

LORD ASHBURTON, &c., &c., &c.

Captain Talcott to Mr. Webster.

WASHINGTON, *July* 14, 1842.

SIR,—The territory within the lines mentioned by you contains *eight hundred and ninety-three* square miles, equal to *five hundred and seventy-one thousand five hundred and twenty* acres. It is a long and narrow tract upon the mountains or highlands,

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the distance from Lake Pohenagamook to the Metjarmette Portage being one hundred and ten miles. The territory is barren, and without timber of value, and I should estimate that nineteen parts out of twenty are unfit for cultivation. Along eighty miles of this territory the highlands throw up into irregular eminences of different heights, and, though observing a general northeast and southwest direction, are not brought well into line. Some of the elevations are over three thousand feet above the sea.

The formation is primitive silicious rock, with slate resting upon it, around the basis. Between the eminences are morasses and swamps, throughout which beds of moss of luxuriant growth rest on and cover the rocks and earth beneath. The growth is such as is usual in mountain regions on this Continent in high latitudes. On some of the ridges and eminences birch and maple are found; on others, spruce and fir; and in the swamps, spruce intermixed with cedar; but the wood every where is insignificant, and of stinted growth. It will readily be seen, therefore, that for cultivation, or as capable of furnishing the means of human subsistence, the lands are of no value.

I am, sir, your obedient servant,

A. TALCOTT, *Commissioner.*

Hon. DANIEL WEBSTER, *Secretary of State.*

The New Hampshire Delegation in Congress to Mr. Webster.

WASHINGTON, *July* 15, 1842.

SIR,—The undersigned, composing the delegation of the State of New Hampshire in both Houses of Congress, have received a copy of a resolution passed by the Legislature of New Hampshire in respect to a portion of the territory of the state which is claimed by Great Britain.

The resolution is as follows:

"STATE OF NEW HAMPSHIRE: In the year of our Lord one thousand eight hundred and forty-two.

"*Resolved by the Senate and House of Representatives in General Court convened,* That his excellency the governor request our senators and representatives in Congress to take such measures as may be necessary, during the pending negotiations at Washington, relative to the northern and northeastern boundary of the United States, to best sustain the rights of this state to the territory over which we have always heretofore claimed and exercised jurisdiction; and that such papers, documents, and information be transmitted to them by his excellency as may aid in carrying into effect the object of this resolution."

The undersigned beg leave to represent that the right of the state to the territory in controversy is, as they believe, incontrovertible; and, before any arrangement shall be made which

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looks to any relinquishment of that right in any degree, it is their wish, on behalf of the state, to present such documents and facts as tend to show the impropriety of such a course.

With great respect,

LEVI WOODBURY, } *Senators.*
LEONARD WILCOX, }
CHAS. G. ATHERTON, }
EDMUND BURKE, } *Members of the House of Representatives.*
TRISTRAM SHAW, }
IRA A. EASTMAN, }
JOHN R. REDING, }

To the PRESIDENT *of the United States.*

Mr. Webster to the New Hampshire Delegation in Congress.

DEPARTMENT OF STATE, *Washington, July* 18, 1842.

GENTLEMEN,—The President of the United States has transmitted to this department a letter dated the 15th instant, from the delegation of the state of New Hampshire in both Houses of Congress, communicating a copy of a resolution passed by the Legislature of that state respecting a portion of her territory which is claimed by Great Britain, and intimating that, pending the present negotiations at Washington, relative to the northern and northeastern boundary of the United States, and before any arrangement shall be made for a relinquishment of the right of the state to the territory referred to, it is the wish of the delegation to present such documents and facts as tend to show the impropriety of such a course.

The Secretary of State would be very happy to receive from the delegation of New Hampshire a statement of what they consider the extent of territory to which the resolution of the State Legislature is supposed to refer; and also any such documents or proofs of any such facts as they may think it important to lay before the government of the United States.

I have the honor, &c.,

DANIEL WEBSTER.

The NEW HAMPSHIRE DELEGATION IN CONGRESS.

The New Hampshire Delegation in Congress to Mr. Webster.

WASHINGTON, *July* 19, 1842.

The undersigned have received a letter from the Secretary of State, dated the 18th instant, in reply to a communication dated the 15th instant, which the undersigned had the honor to address to the President of the United States, communicating a resolution passed by the Legislature of the State of New Hampshire respecting a portion of the territory of that state claimed by Great Britain.

The Secretary of State having expressed a desire to receive

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from the delegation of the State of New Hampshire "a statement of what they consider the extent of territory to which the resolution of the State Legislature is supposed to refer, and also any such documents or proofs of any such facts as they may think it important to lay before the government of the United States," the undersigned beg leave to refer to the following documents and papers, among others, as furnishing a full statement of the claims and rights of the State of New Hampshire to the territory in dispute, and as also defining its boundaries.

1. The argument of the Hon. William C. Bradley, furnished the commissioners under the 5th article of the treaty of Ghent.

2. The statement of the Hon. Albert Gallatin, prepared for the King of the Netherlands.

3. An historical sketch of the northern boundary of New Hampshire, published in the 2d volume of the Collections of the Historical Society of New Hampshire, page 267.

4. A report of commissioners of the State of New Hampshire, dated November 23, 1836, which is to be found accompanying the report of the Committee on Foreign Affairs of the House of Representatives, 25th Congress, 3d session, report No. 176—No. 6 of the accompanying documents.

The undersigned are expecting to receive further documents upon the subject from his Excellency the Governor of New Hampshire, which, when received, they will transmit to the Secretary of State.

We have the honor to be your obedient servants,

LEVI WOODBURY, L. WILCOX, *Senators of New Hampshire.*

IRA A. EASTMAN, EDMUND BURKE, JOHN R. REDING, TRISTRAM SHAW, *Representatives of the State of New Hampshire.*

HON. DANIEL WEBSTER.

P.S.—We transmit herewith the report of commissioners above alluded to, and also the second volume of Historical Collections. You will oblige us by returning the latter when you may have no further use for it.

The other documents are on file in the State Department.

Mr. Stuart to Mr. Webster.

WASHINGTON, *July* 7, 1842.

SIR,—In answer to the inquiries which you were pleased to make of me yesterday, I would remark, that Sugar Island, situate in the River Ste. Marie, a short distance below Fort Brady, is, as to soil, very excellent, and it abounds in the finest (sugar) maple-trees to be found any where; the inhabitants of our side of the Sault Ste. Marie derive a handsome revenue

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from the sugar and sirup which they annually make on this island. It would be a great disappointment to the people of that region to lose it; besides, is the faith of the nation not pledged for its preservation by the treaty held with the Chippewas in 1826, which provided for half-breed reservations on this island?

It is, in my opinion, of very great importance that the right of passage be secured for American vessels between the Island of Bois Blanc, in the River Detroit (opposite Fort Malden), and the British shore; the channel is only 200 to 300 yards wide, and is entirely commanded both by the island and Fort Malden. At present there is no other passage for our larger class of vessels, steam-boats, &c.; and it will require much time and expense to render the old passage south of Grose Isle available. In short, the right of using the British Channel is, in my opinion, absolutely necessary.

I am respectfully, sir, your obedient servant,

ROBERT STUART.

Hon. DANIEL WEBSTER, *Secretary of State.*

Mr. Delafield to Mr. Fraser.

NEW YORK, *July* 20, 1842.

DEAR SIR,—I have looked over the letter of Mr. F. Webster to you, as you desired, and perceive that it is some "particular topographical information," more especially, that the secretary desires concerning the country between Lake Superior and the Lake of the Woods. That district was thoroughly explored by Messrs. Ferguson and Whistler, the surveyors of our party, and by myself, as the United States agent.

We all proceeded *inland*, by the Grand Portage route, to the Lake of the Woods. I had previously obtained much information to prove that there was a more northern route by a well-known *Long Lake*, and the only lake known by that name, some distance north of the Grand Portage route; and as it became my duty to claim that as the true route (having discovered, too, that the British commissioners intended to claim by the Fond du Lac route), I returned by that northern route to Lake Superior, accompanied by Mr. Whistler; we, consequently, saw more of the country than any others of the party.

As you are aware, my claim to the northern route was sustained by the American commissioners, and became a subject of final disagreement.

The only other difference was in relation to the claim I made to St. George's Island, in the River St. Mary, which was also sanctioned by General Porter, the American commissioner, and is a good claim, I think, by all the evidence in the case.

As to the topographical information, some can be had by reference to the maps and discussions which were deposited by

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me in the State Department, July 24, 1824. Beside the journal of the commissioners, I also deposited the journal of the agent, more in detail, containing all the claims and discussions, &c., at length.

The face of the country is mountainous, rocky, and barren for nearly the whole distance in question. Throughout my journeys, I may say, I saw but little except rock and water. My route was necessarily confined to the water-courses; but, whenever I ascended a height, it was the same dreary prospect in all directions, every valley between such heights being a little lake or the discharge of a water-course.

As an agricultural district it has no value or interest, even prospectively, in my opinion. If the climate were suitable, which it is not, I can only say that I never saw, in my explorations there, tillable land enough to sustain any permanent population sufficiently numerous to justify other settlements than those of the fur traders, and, I might add, fishermen. The fur traders there occupied nearly all those places; and the opinion now expressed is the only one I ever heard entertained by those most experienced in these northwestern regions.

There is, nevertheless, much interest felt by the fur traders on this subject of boundary. To them it is of much importance, as they conceive; and it is, in fact, of national importance. Had the British commissioner consented to proceed by the Pigeon River, which is the Long Lake of Mitchell's Map, it is probable there would have been an agreement. There were several reasons for his pertinacity, and for this disagreement, which belong, however, to the private history of the commission, and can be stated when required. The Pigeon River is a continuous water-course. The St. George's Island, in the St. Mary's River, is a valuable island, and worth as much, perhaps, as most of the country between the Pigeon River and Dog River route, claimed for the United States, in an agricultural sense.

Mr. Ferguson is, I believe, in the neighborhood of Wilmington, Delaware. He can give the desired topographical information. I have a complete and daily journal, descriptive of the country passed over, but have no time to refer to it this evening. It would confirm my general remarks, however.

I am now on the eve of departure with my family for Suffolk county, Long Island. Be pleased to say to Mr. Webster, that any and all the information or assistance I can give is at his command, but that, if possible, I hope it may be by correspondence rather than a personal visit, as my engagements here just now are such as to make a jaunt to Washington rather inconvenient. Should topographical information only be desired, and the present is not satisfactory, I would refer the

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secretary to Mr. Ferguson, and would myself refer to my journal. I shall be absent from the city until the 4th of August. Until, say August 1st, my address will be at "Quoque, Suffolk county, Long Island." You are quite at liberty to show these hasty remarks to Mr. Webster; in short, it is better to do so than to repeat them, and I would prefer it.

Yours truly, JOS. DELAFIELD.

Major D. FRAZER.

Mr. Webster to Mr. Ferguson.

DEPARTMENT OF STATE, *Washington, July* 25, 1842.

SIR,—Having been astronomer and surveyor to the commissioners under the seventh article of the Treaty of Ghent, and having, as I understand, explored the country personally and thoroughly from Lake Superior to the Lake of the Woods, I will be obliged to you to give me information in respect to two or three subjects of inquiry.

In the first place, be kind enough to describe the Pigeon River, its estuary or bay at its mouth, its size, and the nature of its channel and current in the last five or ten miles of its course. Be pleased to say whether the estuary of this river, and its position and bearing in relation to Isle Royal, may naturally lead to the conclusion that it is the Long Lake spoken of in the treaty of 1783.

What is the general nature of the country between the mouth of Pigeon River and the Rainy Lake? Of what formation is it, and how is its surface? and will any considerable portion of its area be fit for cultivation? Are its waters active and running streams, as in other parts of the United States, or are they dead lakes, swamps, and morasses? If the latter be their general character, at what point, as you proceed westward, do the waters receive a more decided character as running streams?

There are said to be two lines of communication, each partly by water and partly by portages, from the neighborhood of Pigeon River to the Rainy Lake; one by the way of Fowl Lakes, the Saganaga Lake, and the Cypress Lake; the other by way of Arrow River and Lake, then by way of Saganaga Lake and through the River Maligne, meeting the other route at Lake la Croix, and through the River Namekan to the Rainy Lake. Do you know any reason for attaching great preference to either of these two lines? Or do you consider it of no importance, in any point of view, which may be agreed to? Please be full and particular on these several points.

Yours respectfully,

DANIEL WEBSTER.

JAMES FERGUSON, Esq., *Wilmington, Delaware.*

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Mr. Ferguson to Mr. Webster.

WASHINGTON, *July* 25, 1842.

SIR,—I have the honor to acknowledge the receipt of your note of to-day, desiring to be informed of the character of the region northwestward of Lake Superior, which comprehends the several practiced and customary routes between that lake and the Lake of the Woods.

In reply, I submit the following statement, which will give, as far as I am able, the desired information.

At the mouth of the Pigeon River there is probably about three hundred yards in length of alluvial formation; but the river above that, as far as to near Fort Charlotte, runs between steep, cut rocks of basaltic or primitive formation, and is a succession of falls and rapids for nearly its whole length; the last cataract, which is within about a mile of its mouth, being almost one hundred feet in height. You will, perhaps, understand the formation of the country better when I mention that nearly the whole of the northern shore of Lake Superior consists of these sheer rocky escarpments, from six hundred to nine hundred feet high, and that the sources of most of the rivers which have cut their channels into the lake lie within thirty or forty miles of its verge.

There is really not much difference in elevation between South Fowl Lake and the lakes of the height of land. The character I have given of Pigeon River will serve also for the Arrow River, excepting that the latter has a reach of about two miles of still water.

I have no doubt that the bay of the Pigeon River is the Long Lake of the treaty of 1783. It is designated by the name on Mitchell's Map, which at that time was the only map existing of these regions, and was proven, by the evidence of Mr. John Adams and Mr. John Jay, to have been the only geographical description before the negotiators of the first treaty. Though evidently defective and erroneous, it is but fair to take it as an evidence of the intention. In addition to this evidence of the construction of the treaty of 1783, at the time it was concluded, we have this fact further: that, immediately after the peace, the traders of the Northwest Fur Company destroyed their forts and warehouses at the Grand Portage, and removed themselves to Fort William, ten leagues on the other side of the Pigeon River; a course which could only have been adopted for the reason that they supposed their previous location would now be on foreign territory. In addition, I have never heard this construction of the treaty of 1783 questioned by any of the partners of the British Fur Company whom I have met in that quarter.

To your query as to the character of the country between

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the mouth of the Pigeon River and the Rainy Lake, it is more difficult to give a distinct answer than to any of the others. The rivers here are all rapid; those running toward Lake Superior are of small size. The Pigeon River and Arrow River vary in width from sixty to two hundred feet, and, as I have said previously, are almost a continued rapid.

But the rivers running northward: the outlet of Lake Saisaginegau, the River Maligne, the River Namecan, and the Rainy River are all bold and strong rivers, and of much greater width and volume, carrying with them, through gentler slopes, the drainage of a more extended surface. On the plateau which makes the height of land, and which I would define as lying between the Fowl Lake and Lake Namecan, lie a group of lakes connecting nearly with each other, having their sorties sometimes toward the Arrow and Pigeon Rivers, sometimes toward the St. Louis, sometimes toward the Kamanistiquia and the country of the Nipigon, and sometimes toward Hudson's Bay. In examining, therefore, the geography of this country, it is necessary to remember that the rivers and lakes indicated on the maps are only those at present explored, and that there exist other routes and other connections known only to the natives, and which the impracticable nature of the country has hitherto prevented from coming to the knowledge of the fur traders, who are doubtless the persons most interested in the capabilities of the country.

As an agricultural district, this region will always be valueless. The pine timber is of high growth, equal for spars, perhaps, to the Norway pine, and may in time find a market; but there are no alluvions, no arable lands, and the whole country may be described as one waste of rock and water.

From the outlet of the Rainy Lake the country changes its appearance; the valleys of the rivers are wider, the timber of more varied and luxuriant growth, and the country capable of cultivation.

You have desired me, also, to express an opinion as to any preference which I may know to exist between the several lines claimed as boundaries through this country between the United States and Great Britain.

Considering that Great Britain abandons her claim by the Fond du Lac and the St. Louis River, cedes also Sugar Island, otherwise called St. George's Island, in the Ste. Marie River, and agrees, generally, to a boundary following the old commercial route, commencing at the Pigeon River, I do not think that any reasonable ground exists to a final determination of this part of the boundary. I have the honor to be, very respectfully, your obedient servant, J. FERGUSON.

Hon. DANIEL WEBSTER, *Secretary of State of the United States.*

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Captain Talcott to Mr. Webster.

WASHINGTON, *July* 25, 1842.

SIR,—The extent of boundary line separating the United States and territory belonging thereto from the British possessions, and lying between the monument of the St. Croix and the Stony Mountains, is estimated as follows for each adjacent state:

Maine (line as awarded by the King of Holland)	460	miles.
New Hampshire	40	"
Vermont	90	"
New York	420	"
Pennsylvania	30	"
Ohio	200	"
Michigan	740	"
Territory west of Lake Superior	1150	"
Total length of boundary line	3130	"

Respectfully submitted by your obedient servant,

A. TALCOTT.

HON. SECRETARY OF STATE.

SUPPRESSION OF THE SLAVE TRADE.

Mr. Webster to Captains Bell and Paine.

DEPARTMENT OF STATE, *Washington, April* 30, 1842.

GENTLEMEN,—Your experience in the service on the coast of Africa has probably enabled you to give information to the government on some points connected with the slave trade on that coast, in respect to which it is desirable that the most accurate knowledge attainable should be possessed. These particulars are,

1. The extent of the western coast of Africa along which the slave trade is supposed to be carried on, with the rivers, creeks, inlets, bays, harbors, or parts of the coast to which it is understood slave ships most frequently resort.

2. The space or belt along the shore within which cruisers may be usefully employed for the purpose of detecting vessels engaged in the traffic.

3. The general course of proceeding of a slave ship after leaving Brazil or the West Indies on a voyage to the coast of Africa for slaves, including her manner of approach to the shore, her previous bargain or arrangement for the purchase of slaves, the time of her usual stay on or near the coast, and the means by which she has communication with persons on land.

4. The nature of the stations, or barracoons, in which slaves

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are collected on shore to be sold to the traders, whether usually in rivers, creeks, or inlets, or on or near the open shore.

5. The usual articles of equipment and preparation, and the manner of fitting up, by which a vessel is known to be a slaver, though not caught with slaves on board.

6. The utility of employing vessels of different nations to cruise together, so that one or the other might have a right to visit and search every vessel which might be met with under suspicious circumstances, either as belonging to the country of the vessel visiting and searching; or to some other country which has, by treaty, conceded such right of visitation and search.

7. To what places slaves from slave ships could be most conveniently taken.

8. Finally, what number of vessels, and of what size and description, it would be necessary to employ on the western coast of Africa, in order to put an entire end to the traffic in slaves, and for what number of years it would probably be necessary to maintain such force to accomplish that purpose?

You will please to add such observations as the state of your knowledge may allow relative to the slave trade on the eastern coast of Africa.

I have the honor to be, &c.,

DANIEL WEBSTER.

Captains BELL and PAINE, *United States Navy*.

Mr. Paine to Mr. Webster.

WASHINGTON, *May* 2, 1842.

SIR,—The agreement between Commander William Tucker, of the British navy, and myself is so connected with numerous instructions respecting proceedings on the coast of Africa, that I should furnish a copy of all if the object were to justify myself; but as the wish of the State Department seems to be to ascertain the nature of the agreement itself, and the action of myself thereon; and as I wish to forward this view promptly, I shall restrict myself to these points, commencing with the agreement, of which the following is a copy:

"Commander William Tucker, of her Britannic majesty's sloop Wolverine, and senior officer on the west coast of Africa, and Lieutenant John S. Paine, commanding the United States schooner Grampus, in order to carry into execution, as far as possible, the orders and views of their respective governments respecting the suppression of the slave trade, hereby request each other, and agree to detain all vessels under American colors found to be fully equipped for and engaged in the slave trade; that, if proved to be American property, they shall be handed over to the United States schooner Grampus, or any

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other American cruiser; and that, if proved to be Spanish, Portuguese, Brazilian, or English property, to any of her Britannic majesty's cruisers employed on the west coast of Africa for the suppression of the slave trade, so far as their respective laws and treaties will permit.

"Signed and exchanged at Sierra Leone, this 11th day of March, 1840.

"JOHN S. PAINE,
"*Commanding the U. S. Schooner Grampus.*
"WILLIAM TUCKER,
"*Commanding H. B. M. Sloop Wolverine, and Senior Officer of West Coast of Africa.*"

The objects of this agreement were, mainly,

1st. To meet the very common case with slavers, that of having on board two sets of papers.

2d. To let it be known that there subsisted between the British and American force a good understanding, and a disposition to co-operate for the purpose indicated, as far as possible, without violating existing treaties.

A copy was forwarded by me to the Navy Department, to which I received the following reply:

"NAVY DEPARTMENT, *June* 4, 1840.

"SIR,—Your letter of the 23d of March last, with its inclosures, has been received.

"The instructions given you for your government when you left the United States, while they indicated a friendly co-operation with the commanders of the British cruisers in the suppression of the slave trade on the coast of Africa, as likely to aid in detecting the frauds resorted to by those engaged in it for the purpose of avoiding discovery and escaping punishment, were not intended to authorize any such arrangement as that which, it appears, you have made with the commander of her Britannic majesty's sloop Wolverine, and by which you delegated to that officer the right to seize vessels under American colors, and, under certain circumstances, to detain them, with the view of turning them over to the Grampus, or other United States cruiser.

"Such a delegation of power is not only unauthorized by your instructions, but contrary to the established and well-known principles and policy of your government, and is, therefore, not sanctioned by the department.

"You will make known the views of the department on this subject to the commander of the Wolverine, and inform him that the arrangement made with him, having been disapproved of by your government, can not, on your part, be complied with.

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"The great object of the co-operation being to obviate the difficulties of capture, growing out of the practice adopted by slavers of assuming Portuguese, English, Spanish, or Brazilian colors when overhauled by an American, or American colors when overhauled by a British cruiser; for this purpose, you are authorized to cruise in company and in co-operation with any British vessel of war employed on the slave coast in the pursuit of objects similar to your own.

"I am, respectfully, your obedient servant,

"J. K. PAULDING.

"Lieutenant JOHN S. PAINE, *commanding U. S. Schooner Grampus, Sierra Leone, Coast of Africa.*"

In compliance with this, I addressed Capt. Tucker as follows:

"U. S. SCHOONER GRAMPUS, *April* 27, 1841.

"SIR,—I am directed to make known to you the views of my government respecting the agreement signed and exchanged with you on the 11th of March, 1840, at Sierra Leone.

"The Secretary of the Navy says: 'Inform him that the arrangement made with him, having been disapproved by your government, can not, on your part, be complied with. The great object of the co-operation being to obviate the difficulties of capture, growing out of the practice adopted by slavers of assuming Portuguese, English, Spanish, or Brazilian colors when overhauled by an American, or American colors when overhauled by a British cruiser; for this purpose, you are authorized to cruise in company and in co-operation with any British vessel of war employed on the slave coast in pursuit of objects similar to your own.'

"From the above extract you will perceive that the Secretary of the Navy at Washington is careful to avoid giving countenance to the practice of detaining American vessels, even though they be slavers, unless by American vessels of war.

"The best, if not the only, means of co-operation left, would seem to be, exchanging information, or cruising in company.

"If any thing can be effected by this vessel within such limits while on the coast, it will be gratifying to me to aid you, or any of her majesty's officers, in forwarding so desirable an object.

"I am, with very high respect, sir, your obedient servant,

"JOHN S. PAINE, *Lieutenant commanding.*

"Captain WILLIAM TUCKER, *commanding H. B. M. Sloop Wolverine, and Senior Officer of H. B. M. Naval Forces on the Coast of Africa.*"

Hoping to meet Captain Tucker, I did not dispatch the letter; but, finally, finding that his successor had arrived, I addressed to him the following:

[EXTRACT.]

"U. S. SCHOONER GRAMPUS, *Sierra Leone, June* 17, 1841.

"While cruising here last year, I had made an arrangement

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with Commander William Tucker of a similar character to that recommended; which, however, was not approved by the Secretary of the Navy; and, as I have not fallen in with Captain Tucker since the receipt of a communication from Washington on the subject, I have deemed it proper to inclose to you a letter to Captain Tucker, with a copy of the agreement referred to therein.

"In conclusion, I tender to you my sincere wishes for your success in the prosecution of duties so interesting to the cause of humanity.

"I am, with the highest respect, sir, your obedient servant,

"JOHN S. PAINE, *Lieutenant commanding.*

"Captain ——— ———, *commanding H. B. M. Ship Iris, and Senior Officer on the Western Coast of Africa.*"

Any expression of my opinion of Mr. Paulding's letter to me would have been improper, and would still be indecorous. I shall be grateful to be informed if you think any explanation or defense necessary. I have never believed so.

I have the honor to be, with the highest respect, sir, your obedient servant,

JOHN S. PAINE,
Commander United States Navy.

Hon. DANIEL WEBSTER, *Secretary of State.*

Commanders Bell and Paine to the Secretary of State.

WASHINGTON CITY, *May* 10, 1842.

SIR,—In accordance with the wishes expressed in your communication of the 30th ultimo, we have the honor to submit the following statement:

In reply to the first particular, viz., "The extent of the western coast of Africa, along which the slave trade is supposed to be carried on, with the rivers, creeks, inlets, bays, harbors, or ports of the coast to which it is understood slave ships most frequently resort."

The slave trade from Western Africa to America is carried on wholly between Senegal, latitude 16 deg. north, longitude 16½ deg. west, and Cape Frio, in latitude 18 deg. south, longitude 12 deg. east, a space (following the windings of the coast at the distance of three or four miles) of more than 3600 miles. There are scattered along the coast five English, four French, five American, six Portuguese, six or eight Dutch, and four or five Danish settlements, besides many which have been abandoned by their respective governments.

These settlements are generally isolated; many of them only a fortress without any town, while a few are a cluster of villages and farms.

The British, French, and particularly the American settlements, exercise an important influence in suppressing the slave trade.

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The influence of the Danes and Dutch is not material.

The Portuguese influence is supposed to favor the continuance of the trade, except the counter influence of the British, through treaty stipulations.

North of the Portuguese cluster of settlements, of which Bissao is the capital, and south of Benguela (also Portuguese), there is believed to be no probability of a revival of the slave trade to any extent.

This leaves about 3000 miles of coast, to which the trade (principally with Cuba, Porto Rico, and Brazil) is limited.

There are hundreds of trading places on the coast calling themselves "factories," and each claiming the protection of some civilized power. Some of these were the sites of abandoned colonies; others have been established by trading companies or individuals.

The actual jurisdiction of a tribe on the coast seldom exceeds ten miles, though these small tribes are sometimes more or less perfectly associated for a greater distance.

Of these factories and tribes a few have never been directly engaged in the slave trade, and are opposed to it, but the great preponderance is of the slave-trading interest.

To enumerate the rivers and inlets of this coast would not convey a just idea of the slave country or practices, as the embarkation often takes place from the beach where there is no inlet; but we will state a few of the most noted.

Commencing at Cape Roxo, in latitude 12 deg. 30 min. north, and running down the coast as far as the River Mellacoree, in latitude 9 deg. north, the slave trade is more or less carried on, but (in consequence of the vigilance of cruisers) not to the same extent that it was a few years ago.

Another portion of the coast, from the limits of the Sierra Leone colony to Cape Mount (a space including the mouths of six or more rivers), the slave trade is extensively prosecuted. Here commences the jurisdiction of the American Colonization Society, which extends to Grand Bassa. There are several slave stations between Grand Bassa and Cape Palmas. Thence eastwardly to Cape Coast Castle, situated near the meridian of Greenwich, we believe there are no slave stations; but eastward of this, and in the bights of Benin and Biafra, along the whole coast (which includes the mouths of the great rivers Benin, Formosa, Nun, Old and New Calabar, Bonny, Cameron's, Gaboon, and Congo), with few exceptions, down to Benguela, in latitude 13 deg. south, the slave trade is carried on to a very great extent.

"2d. The space or belt along the shore, within which cruisers may be usefully employed for the purpose of detecting vessels engaged in the traffic."

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Men-of-war should always cruise as near the shore as the safety of the vessel will admit, in order to take advantage of the land and sea breezes. Twenty or thirty miles from the coast there are continual calms, where vessels are subject to vexatious delays; besides which, ships engaged in the slave trade keep close in with the land, in order to reach their places of destination.

"3d. The general course of proceeding of a slave ship, after leaving Brazil or the West Indies, on a voyage to the coast of Africa for slaves, including her manner of approach to the shore, her previous bargain or arrangement for the purchase of slaves, the time of her usual stay on or near the coast, and the means by which she has communication with persons on land."

Vessels bound from the coast of Brazil or the West Indies to the coast of Africa are obliged, in consequence of the trade winds, to run north as far as the latitude of thirty or thirty-five, to get into the variable winds; thence to the eastward, until they reach the longitude of Cape Verd Islands; then steer to the southward to their port of destination; and, if bound as far to the eastward as the Gulf of Guinea, usually make the land near Cape Mount or Cape Palmas. Vessels from Brazil bound to the southern part of the coast of Africa run south as far as the latitude of 35 deg. south, and make up their easting in the southern variables.

Slave vessels are generally owned or chartered by those persons who have an interest in the slave establishments on the coast of Africa, where the slaves are collected and confined in barracoons, or slave prisons, ready for transhipment the moment the vessel arrives. They are, therefore, detained but a short time after arriving at their place of destination. Instances have come to our notice of vessels arriving at the slave station in the evening, landing their cargo, taking on board all their slaves, and sailing with the land breeze on the following morning.

It is not unusual, however, for vessels unconnected with any particular slave establishment to make their purchases after arrival. If any delay is likely to occur, an agent is landed, and the vessel stands to sea, and remains absent for as long a time as may be thought necessary to complete their arrangements.

The slavers communicate with the shore either with their own boats, or boats and canoes belonging to the Kroomen in the employment of those on shore.

"4th. The nature of the stations, or barracoons, in which slaves are collected on shore to be sold to the traders, whether usually on rivers, creeks, or inlets, or on or near the open shore."

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The slave stations are variously situated; some near the mouth, others a considerable distance up the river, and many directly on the sea-shore. The barracoons are thatched buildings, made sufficiently strong to secure the slaves, and enough of them to contain, in some instances, several thousands. The slaves are collected by the negro chiefs in the vicinity, and sold to the persons in charge of the stations, where they are kept confined until an opportunity offers to ship them off. Materials of all kinds necessary to convert a common trader into a slave ship are kept on hand, and the change can be completed in a few hours. A number of Kroomen are employed, and boats and canoes ready for immediate service.

The slave stations are generally fortified with cannon and muskets, not only to guard against a rising of the slaves, but to protect them from sudden attacks of the natives in the vicinity, and to command their respect.

"5th. The usual articles of equipment and preparation, and the manner of fitting up, by which a vessel is known to be a slaver, though not caught with slaves on board."

Vessels engaged in the slave trade are either fitted up with a slave deck, or have the materials on board, prepared, to put one up in a few hours. Their hatches, instead of being close, as is usual in merchantmen, have gratings; they are supplied with boilers sufficiently large to cook rice or farina for the number of slaves they expect to receive; an extra number of water casks, many more than are sufficient for a common crew; also a number of shackles to secure their slaves. Most of these articles, however, are concealed, and every thing is done to disguise the vessel.

It is not unusual for them to have several sets of papers; two or more persons representing themselves as captains or masters of the vessel, and flags of all nations. Every device is resorted to to deceive should they encounter a cruiser.

Some are armed with only a few muskets; others have a number of heavy guns, according to the size of the vessel; and they range from sixty to four hundred tons burden, with crews from ten to upward of one hundred men.

"6th. The utility of employing vessels of different nations to cruise together, so that one or the other might have a right to visit and search every vessel which might be met with under suspicious circumstances, either as belonging to the country of the vessel visiting or searching, or to some other country which has, by treaty, conceded such right of visitation and search."

We are of opinion that a squadron should be kept on the coast of Africa to co-operate with the British, or other nations interested in stopping the slave trade; and that the most ef-

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ficient mode would be for vessels to cruise in couples, one of each nation.

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"7th. To what places slaves taken from slave ships on the coast could be most conveniently taken."

If captured under the American flag, send them to Cape Mesurada, Liberia, or, if convenient, to such other of the American settlements as the agent of the United States there may wish.

"8th. Finally, what number of vessels, and of what size and description, it would be necessary to employ on the western coast of Africa in order to put an entire end to the traffic in slaves, and for what number of years it would probably be necessary to maintain such force to accomplish that purpose;" adding "such observations as the state of your knowledge may allow relative to the slave trade on the eastern coast of Africa."

As our personal knowledge of the coast extends to only that part of it comprised between Cape Verd and Cape Palmas, it is difficult to state the exact force required for this service. Not less, however, than the following, we think necessary:

One first class sloop-of-war.

One steamer from 200 to 300 tons burden.

Two (eight or ten gun) brigs or schooners.

Ten schooners of about 100 tons, each with four guns.

One store-ship of from 250 to 300 tons.

All the vessels to have one tenth less than their complements of men; to be filled up with Kroomen on their arrival on the coast.

A steamer, to be fitted up, if possible, to burn either wood or coal, as circumstances require, will be essentially necessary.

That part of the coast of Africa from which slaves are exported is subject to light winds and calms. A steamer propelled at the rate of six miles an hour could easily overtake the fastest sailing vessels, and would be a great auxiliary in ascending rivers and towing boats in order to attack slave stations. Less duty is performed by sailing cruisers on this coast than on any other we are acquainted with, from the reasons just stated; and the importance of steam-vessels is much increased by this difficulty.

We can not state confidently how long such force would be necessary, but we are of opinion that in three years the trade would be so far destroyed as to enable the United States to withdraw a greater part, while a small force of observation would be necessary until the natives had become accustomed to other occupations and lost all hope of again engaging in the traffic.

In connection with this subject we beg leave to remark, that

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the American fair trader is sometimes obstructed in the most vexatious manner by armed British merchantmen, sustained by British cruisers. This arises from the practice which exists with the commanders of single cruisers, the agents of trading companies, the masters of merchantmen, and others, making agreements, treaties, or, as the expression there is, "books," securing to themselves the exclusive trade with the tribe or district. A late instance of this unreasonable, and probably unauthorized, spirit of monopoly has come to our notice near Cape Mount, where the native chief was induced to believe that he could not make a treaty with the American colonists, because he had made one with the commander of a British cruiser.

The same commander, it is asserted, has also threatened the governor of the colony at Monrovia that he will make reprisals on the commerce of the colony for exercising the usual jurisdiction at Bassa Cove, only two or three miles from their town of Bassa and Edina.

Our knowledge of the commanders of British cruisers authorizes us to say that their conduct is not usually thus unfriendly; but many instances show the propriety of guarding the interests of the fair dealer, who is generally opposed to the slave trade.

Respecting these treaties or agreements with the tribes, we think that only the commanders of squadrons or governors of colonies should be permitted to make them; and with those over whom their governments can not reasonably claim jurisdiction, treaties should not be made to the exclusion of other mercantile powers trading on the coast, as has sometimes been done; and all treaties should contain a prohibition of the slave trade. Commanders of squadrons and governors of colonies should be authorized and directed to seize every opportunity, and make use of all honorable means, of inducing the native tribes, and particularly the Emperor of Ashantee, the empress or potentate at Loango, and other powerful nations, to enter into agreements to put a stop, as far as their influence extends, to the traffic; to seize and send home for trial all foreigners found on the coast engaged in the slave trade, whether belonging to vessels or residing on the coast (for should these persons be permitted to remain, even after their slave stations are destroyed, they will erect others at points probably less assailable), and should be enjoined to extend their protection to fair traders, though not of their own nation.

Commanders of squadrons and governors should be directed to destroy all slave factories within the reach of the force employed, and to proclaim to the tribes in the vicinity that they must not be renewed, on pain of having their villages also destroyed.

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We have little knowledge of the details respecting the slave trade on the eastern coast of Africa. No instance has come to our knowledge of the use of the American flag there. From the best information we can obtain, it seems that a large trade is carried on by Portuguese colonies, the Arab chiefs, and negro tribes. Their greatest markets are the Mohammedan countries, bordering on the Red Sea and Persian Gulf, the Portuguese East India colonies, Bombay, and perhaps other British possessions in the East Indies; this part of the trade is probably in the hands of the Arabian vessels. Many are also shipped to Brazil, and some, perhaps, find their way to Cuba and Porto Rico.

In concluding this subject, we beg leave to remark, that the field of operations to carry on the slave trade is so extensive, the profits so great, and the obstacles in the path so many, so various, so difficult, that every means should be used by civilized nations, and particularly by the United States and Great Britain, to effect the object; and we do not believe that any material good can result without an earnest and cordial co-operation. We have the honor to be, with high respect, your obedient servants,

CHARLES H. BELL,
JOHN S. PAINE, } *Commanders U. S. Navy.*

Hon. DANIEL WEBSTER, *Secretary of State, Washington.*

Lord Ashburton to Mr. Webster.

WASHINGTON, *August* 9, 1842.

SIR,—By the 3d article of the convention which I have this day signed with you, there is an agreement for the reciprocal delivery, in certain cases, of criminals fugitive from justice; but it becomes necessary that I should apprise you that this article can have no legal effect within the dominions of Great Britain until confirmed by act of Parliament. It is possible that Parliament may not be in session before the exchange of the ratifications of the convention, but its sanction shall be asked at the earliest possible period, and no doubt can be entertained that it will be given. In her majesty's territories in Canada, where cases for acting under this convention are likely to be of more frequent occurrence, the governor general has sufficient power, under the authority of local legislation, and the convention will there be acted upon so soon as its ratification shall be known; but it becomes my duty to inform you of the short delay which may possibly intervene in giving full effect to it where the confirmation by Parliament becomes necessary for its execution. I beg, sir, to renew to you the assurance of my high consideration. ASHBURTON.

Hon. DANIEL WEBSTER, &c., &c., &c.

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CORRESPONDENCE WITH LORD ASHBURTON.

MARITIME RIGHTS.

CASE OF THE "CREOLE."

Mr. Webster to Lord Ashburton.

DEPARTMENT OF STATE, *Washington, August* 1, 1842.

MY LORD,—The President has learned with much regret that you are not empowered by your government to enter into a formal stipulation for the better security of vessels of the United States when meeting with disasters in passing between the United States and the Bahama Islands, and driven by such disasters into British ports. This is a subject which is deemed to be of great importance, and which can not, on the present occasion, be overlooked.

Your lordship is aware that several cases have occurred within the last few years which have caused much complaint. In some of these cases compensation has been made by the English government for the interference of the local authorities with American vessels having slaves on board, by which interference these slaves were set free. In other cases, such compensation has been refused. It appears to the President to be for the interest of both countries that the recurrence of similar cases in future should be prevented as far as possible.

Your lordship has been acquainted with the case of the "Creole," a vessel carried into the port of Nassau last winter by persons who had risen upon the lawful authority of the vessel, and, in the accomplishment of their purpose, had committed murder on a person on board.

The opinions which that occurrence gave occasion for this government to express, in regard to the rights and duties of friendly and civilized maritime states, placed by Providence near to each other, were well considered, and are entertained with entire confidence. The facts in the particular case of the "Creole" are controverted: positive and officious interference by the colonial authorities to set the slaves free being alleged on the one side and denied on the other.

It is not my present purpose to discuss this difference of opinion as to the evidence in the case, as it at present exists, because the rights of individuals having rendered necessary a more thorough and a judicial investigation of facts and circumstances attending the transaction, such investigation is understood to be now in progress, and its result, when known, will render me more able than at this moment to present to the British government a full and accurate view of the whole case.

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But it is my purpose and my duty to invite your lordship's attention to the general subject, and your serious consideration of some practical means of giving security to the coasting trade of the United States against unlawful annoyance and interruption along this part of their shore. The Bahama Islands approach the coast of Florida within a few leagues, and, with the coast, form a long and narrow channel, filled with innumerable small islands and banks of sand, and the navigation difficult and dangerous, not only on these accounts, but from the violence of the winds and the variable nature of the currents. Accidents are, of course, frequent, and necessity often compels vessels of the United States, in attempting to double Cape Florida, to seek shelter in the ports of these islands. Along this passage the Atlantic states hold intercourse with the states on the Gulf and the Mississippi, and through it the products of the valley of that river (a region of vast extent and boundless fertility) find a main outlet to the sea in their destination to the markets of the world.

No particular ground of complaint exists as to the treatment which American vessels usually receive in these ports, unless they happen to have slaves on board; but, in cases of that kind, complaints have been made, as already stated, of officious interference of the colonial authorities with the vessel, for the purpose of changing the condition in which these persons are, by the laws of their own country, and of setting them free.

In the southern states of this Union slavery exists by the laws of the states and under the guarantee of the Constitution of the United States; and it has existed in them from a period long antecedent to the time when they ceased to be British colonies. In this state of things, it will happen that slaves will be often on board coasting vessels, as hands, as servants attending the families of their owners, or for the purpose of being carried from port to port. For the security of the rights of their citizens, when vessels having persons of this description on board are driven by stress of weather, or carried by unlawful force, into British ports, the United States propose the introduction of no new principle into the law of nations. They require only a faithful and exact observance of the injunctions of that code, as understood and practiced in modern times.

Your lordship observes that I have spoken only of American vessels driven into British ports by the disasters of the seas, or carried in by unlawful force. I confine my remarks to these cases, because they are the common cases, and because they are the cases which the law of nations most emphatically exempts from interference. The maritime law is full of instances of the application of that great and practical rule, which declares that that which is the clear result of necessity

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ought to draw after it no penalty and no hazard. If a ship be driven by stress of weather into a prohibited port, or into an open port with prohibited articles on board, in neither case is any forfeiture incurred. And what may be considered a still stronger case, it has been decided by eminent English authority, and that decision has received general approbation, that if a vessel be driven by necessity into a port strictly blockaded, this necessity is good defense, and exempts her from penalty.

A vessel on the high seas, beyond the distance of a marine league from the shore, is regarded as part of the territory of the nation to which she belongs, and subjected exclusively to the jurisdiction of that nation. If, against the will of her master or owner, she be driven or carried nearer to the land, or even into port, those who have, or who ought to have, control over her, struggling all the while to keep her upon the high seas, and so within the exclusive jurisdiction of her own government, what reason or justice is there in creating a distinction between her rights and immunities in a position thus the result of absolute necessity, and the same rights and immunities before superior power had forced her out of her voluntary course?

But, my lord, the rule of law, and the comity and practice of nations, go much further than these cases of necessity, and allow even to a merchant vessel, coming into any open port of another country voluntarily, for the purposes of lawful trade, to bring with her, and keep over her, to a very considerable extent, the jurisdiction and authority of the laws of her own country, excluding to this extent, by consequence, the jurisdiction of the local laws. A ship, say the publicists, though at anchor in a foreign harbor, preserves its jurisdiction and its laws. It is natural to consider the vessels of a nation as parts of its territory, though at sea, as the state retains its jurisdiction over them; and, according to the commonly received custom, this jurisdiction is preserved over the vessels, even in parts of the sea subject to a foreign dominion.

This is the doctrine of the law of nations, clearly laid down by writers of received authority, and entirely conformable, as it is supposed, with the practice of modern nations.

If a murder be committed on board of an American vessel by one of the crew upon another or upon a passenger, or by a passenger on one of the crew or another passenger, while such vessel is lying in a port within the jurisdiction of a foreign state or sovereignty, the offense is cognizable and punishable by the proper court of the United States, in the same manner as if such offense had been committed on board the vessel on the high seas. The law of England is supposed to be the same.

It is true that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of another, is not neces-

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sarily wholly exclusive. We do not so consider or so assert it. For any unlawful acts done by her while thus lying in port, and for all contracts entered into while there, by her master or owners, she and they must, doubtless, be answerable to the laws of the place. Nor, if her master or crew, while on board in such port, break the peace of the community by the commission of crimes, can exemption be claimed for them. But, nevertheless, the law of nations, as I have stated it, and the statutes of governments founded on that law, as I have referred to them, show that enlightened nations, in modern times, do clearly hold that the jurisdiction and laws of a nation accompany her ships not only over the high seas, but into ports and harbors, or wheresoever else they may be water-borne, for the general purpose of governing and regulating the rights, duties, and obligations of those on board thereof, and that, to the extent of the exercise of this jurisdiction, they are considered as parts of the territory of the nation herself.

If a vessel be driven by weather into the ports of another nation, it would hardly be alleged by any one that, by the mere force of such arrival within the waters of the state, the law of that state would so attach to the vessel as to affect existing rights of property between persons on board, whether arising from contract or otherwise. The local law would not operate to make the goods of one man to become the goods of another man. Nor ought it to affect their personal obligations, or existing relations between themselves; nor was it ever supposed to have such effect, until the delicate and exciting question which has caused these interferences in the British islands arose. The local law in these cases dissolves no obligations or relations lawfully entered into or lawfully existing according to the laws of the ship's country. If it did, intercourse of civilized men between nation and nation must cease. Marriages are frequently celebrated in one country in a manner not lawful or valid in another; but did any body ever doubt that marriages are valid all over the civilized world, if valid in the country in which they took place? Did any one ever imagine that local law acted upon such marriages to annihilate their obligation, if the party should visit a country in which marriages must be celebrated in another form?

It may be said that, in such instances, personal relations are founded in contract, and therefore to be respected; but that the relation of master and slave is not founded in contract, and therefore is to be respected only by the law of the place which recognizes it. Whoever so reasons encounters the authority of the whole body of public law from Grotius down; because there are numerous instances in which the law itself presumes or implies contracts; and prominent among those instances is

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the very relation which we are now considering, and which relation is holden by law to draw after it mutuality of obligation.

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Is not the relation between a father and his minor children acknowledged when they go abroad? And on what contract is this founded, but a contract raised by general principles of law, from the relation of the parties?

Your lordship will please to bear in mind that the proposition which I am endeavoring to support is, that by the comity of the law of nations, and the practice of modern times, merchant vessels entering open ports of other nations, for the purpose of trade, are presumed to be allowed to bring with them, and to retain, for their protection and government, the jurisdiction and laws of their own country. All this, I repeat, is presumed to be allowed; because the ports are open, because trade is invited, and because, under these circumstances, such permission or allowance is according to general usage. It is not denied that all this may be refused; and this suggests a distinction, the disregard of which may, perhaps, account for most of the difficulties arising in cases of this sort; that is to say, the distinction between what a state may do, if it pleases, and what it is presumed to do, or not to do, in the absence of any positive declaration of its will. A state might declare that all foreign marriages should be regarded as null and void within its territory; that a foreign father, arriving with an infant son, should no longer have authority or control over him; that, on the arrival of a foreign vessel in its ports, all shipping articles, and all indentures of apprenticeship between her crew and her owners or masters, should cease to be binding. These, and many other things equally irrational and absurd, a sovereign state has doubtless the power to do; but they are not to be presumed. It is not to be taken for granted, *ab ante*, that it is the will of the sovereign state thus to withdraw itself from the circle of civilized nations. It will be time enough to believe this to be its intention when it formally announces that intention by appropriate enactments, edicts, or other declarations.

In regard to slavery within the British territories, there is a well-known and clear promulgation of the will of the sovereign authority; that is to say, there is a well-known rule of her law. As to England herself, that law has long existed; and recent acts of Parliament establish the same law for the colonies. The usual mode of stating the rule of English law is, that no sooner does a slave reach the shore of England than he is free. This is true; but it means no more than that when a slave comes within the exclusive jurisdiction of England he ceases to be a slave, because the law of England positively and notoriously prohibits and forbids the existence of such a relation between man and man. But it does not mean that

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English authorities, with this rule of English law in their hands, may enter where the jurisdiction of another nation is acknowledged to exist, and there destroy rights, obligations, and interests lawfully existing under the authority of such other nation. No such construction, and no such effect, can be rightfully given to the British law. It is true that it is competent to the British Parliament, by express statute provision, to declare that no foreign jurisdiction of any kind should exist in or over a vessel after its arrival voluntarily in her ports. And so she might close all her ports to the ships of all nations. A state may also declare, in the absence of treaty stipulations, that foreigners shall not sue in her courts, nor travel in her territories, nor carry away funds or goods received for debts. We need not inquire what would be the condition of a country that should establish such laws, nor in what relation they would leave her toward the states of the civilized world. Her power to make such laws is unquestionable; but, in the absence of direct and positive enactments to that effect, the presumption is that the opposites of these things exist. While her ports are open to foreign trade, it is to be presumed that she expects foreign ships to enter them, bringing with them the jurisdiction of their own government, and the protection of its laws, to the same extent that her ships and the ships of other commercial states carry with them the jurisdiction of their respective governments into the open ports of the world; just as it is presumed, while the contrary is not avowed, that strangers may travel in a civilized country in a time of peace, sue in its courts, and bring away their property.

A merchant vessel enters the port of a friendly state, and enjoys while there the protection of her own laws, and is under the jurisdiction of her own government, not in derogation of the sovereignty of the place, but by the presumed allowance or permission of that sovereignty. This permission or allowance is founded on the comity of nations, like the other cases which have been mentioned; and this comity is part, and a most important and valuable part, of the law of nations, to which all nations are presumed to assent until they make their dissent known. In the silence of any positive rule affirming, or denying, or restraining the operation of foreign laws, their tacit adoption is presumed, to the usual extent. It is upon this ground that the courts of law expound contracts according to the law of the place in which they are made; and instances almost innumerable exist in which, by the general practice of civilized countries, the laws of one will be recognized and often executed in another. This is the comity of nations; and it is upon this, as its solid basis, that the intercourse of civilized states is maintained.

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But while that which has now been said is understood to be the voluntary and adopted law of nations, in cases of the voluntary entry of merchant vessels into the ports of other countries, it is nevertheless true that vessels in such ports, only through an overruling necessity, may place their claim for exemption from interference on still higher principles; that is to say, principles held in more sacred regard by the comity, the courtesy, or, indeed, the common sense of justice of all civilized states.

Even in regard to cases of necessity, however, there are things of an unfriendly and offensive character, which yet it may not be easy to say that a nation might not do. For example, a nation might declare her will to be, and make it the law of her dominions, that foreign vessels cast away on her shores should be lost to their owners, and subject to the ancient law of wreck. Or a neutral state, while shutting her ports to the armed vessels of belligerents, as she has a right to do, might resolve on seizing and confiscating vessels of that description which should be driven to take shelter in her harbors by the violence of the storms of the ocean. But laws of this character, however within the absolute competence of governments, could only be passed, if passed at all, under willingness to meet the last responsibility to which nations are subjected.

The presumption is stronger, therefore, in regard to vessels driven into foreign ports by necessity, and seeking only temporary refuge, than in regard to those which enter them voluntarily, and for purposes of trade, that they will not be interfered with; and that, unless they commit, while in port, some act against the laws of the place, they will be permitted to receive supplies, to repair damages, and to depart unmolested.

If, therefore, vessels of the United States, pursuing lawful voyages from port to port along their own shore, are driven by stress of weather, or carried by unlawful force, into English ports, the government of the United States can not consent that the local authorities in those ports shall take advantage of such misfortunes, and enter them for the purpose of interfering with the condition of persons or things on board, as established by their own laws. If slaves, the property of citizens of the United States, escape into the British territories, it is not expected that they will be restored. In that case, the territorial jurisdiction of England will have become exclusive over them, and must decide their condition. But slaves on board of American vessels, lying in British waters, are not within the exclusive jurisdiction of England, or under the exclusive operation of English law; and this founds the broad distinction between the cases. If persons, guilty of crimes in

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the United States, seek an asylum in the British dominions, they will not be demanded, until provision for such cases be made by treaty; because the giving up of criminals, fugitive from justice, is agreed and understood to be a matter in which every nation regulates its conduct according to its own discretion. It is no breach of comity to refuse such surrender.

On the other hand, vessels of the United States, driven by necessity into British ports, and staying there no longer than such necessity exists, violating no law, nor having intent to violate any law, will claim, and there will be claimed for them, protection and security, freedom from molestation, and from all interference with the character or condition of persons or things on board. In the opinion of the government of the United States, such vessels, so driven and so detained by necessity in a friendly port, ought to be regarded as still pursuing their original voyage, and turned out of their direct course only by disaster, or by wrongful violence; that they ought to receive all assistance necessary to enable them to resume that direct course; and that interference and molestation by the local authorities, where the whole voyage is lawful, both in act and intent, is ground for just and grave complaint.

Your lordship's discernment and large experience in affairs can not fail to suggest to you how important it is to merchants and navigators engaged in the coasting trade of a country so large in extent as the United States, that they should feel secure against all but the ordinary causes of maritime loss. The possessions of the two governments closely approach each other. This proximity, which ought to make us friends and good neighbors, may, without proper care and regulation, itself prove a ceaseless cause of vexation, irritation, and disquiet.

If your lordship has no authority to enter into a stipulation by treaty for the prevention of such occurrences hereafter as have already happened, occurrences so likely to disturb that peace between the two countries which it is the object of your lordship's mission to establish and confirm, you may still be so far acquainted with the sentiments of your government as to be able to engage that instructions shall be given to the local authorities in the islands, which shall lead them to regulate their conduct in conformity with the rights of citizens of the United States, and the just expectations of their government, and in such manner as shall, in future, take away all reasonable ground of complaint. It would be with the most profound regret that the President should see that, while it is now hoped so many other subjects of difference may be harmoniously adjusted, nothing should be done in regard to this dangerous source of future collisions.

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I avail myself of this occasion to renew to your lordship the assurances of my distinguished consideration.

DANIEL WEBSTER.

LORD ASHBURTON, &c., &c., &c.

Lord Ashburton to Mr. Webster.

WASHINGTON, *August* 6, 1842.

SIR,—You may be well assured that I am duly sensible of the great importance of the subject to which you call my attention in the note which you did me the honor of addressing me the 1st instant, in which you inform me that the President had been pleased to express his regret that I was not empowered by my government to enter into a formal stipulation for the better security of vessels of the United States when meeting with disasters in passing between the United States and the Bahama Islands, and driven by such disasters into British ports.

It is, I believe, unnecessary that I should tell you that the case of the Creole was known in London a few days only before my departure. No complaint had at that time been made by Mr. Everett. The subject was not, therefore, among those which it was the immediate object of my mission to discuss. But at the same time I must admit that, from the moment I was acquainted with the facts of this case, I was sensible of all its importance, and I should not think myself without power to consider of some adjustment of, and remedy for, a great acknowledged difficulty, if I could see my way clearly to any satisfactory course, and if I had not arrived at the conclusion, after very anxious consideration, that, for the reasons which I will state, this question had better be treated in London, where it will have a much increased chance of settlement on terms likely to satisfy the interests of the United States.

The immediate case of the Creole would be easily disposed of, but involves a class and description of cases which, for the purpose of affording that security you seek for the trade of America through the Bahama Channel, brings into consideration questions of law, both national and international, of the highest importance; and, to increase the delicacy and difficulty of the subject, public feeling is sensitively alive to every thing connected with it. These circumstances bring me to the conviction that, although I really believe that much may be done to meet the wishes of your government, the means of doing so would be best considered in London, where immediate reference may be had to the highest authorities on every point of delicacy and difficulty that may arise. Whatever I might attempt would be more or less under the disadvantage of being fettered by apprehensions of responsibility, and I might

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thereby be kept within limits which my government at home might disregard. In other words, I believe you would have a better chance in this settlement with them than with me. I state this after some imperfect endeavors, by correspondence, to come at satisfactory explanations. If I were in this instance treating of ordinary material interests, I should proceed with more confidence; but, anxious as I unfeignedly am that all questions likely to disturb the future understanding between us should be averted, I strongly recommend this question of the security of the Bahama Channel being referred for discussion in London.

This opinion is more decidedly confirmed by your very elaborate and important argument on the application of the general principles of the law of nations to these subjects—an argument to which your authority necessarily gives great weight, but in which I would not presume to follow you with my own imperfect means. Great Britain and the United States, covering all the seas of the world with their commerce, have the greatest possible interest in maintaining sound and pure principles of international law, as well as the practice of reciprocal aid and good offices in all their harbors and possessions. With respect to the latter, it is satisfactory to know that the disposition of the respective governments and people leaves little to be desired, with the single exception of those very delicate and perplexing questions which have recently arisen from the state of slavery, and even these seem confined, and likely to continue to be confined, to the narrow passage of the Bahama Channel. At no other part of the British possessions are American vessels with slaves ever likely to touch, nor are they likely to touch there otherwise than from the pressure of very urgent necessity. The difficulty, therefore, as well as the desired remedy, is apparently confined within narrow limits.

Upon the great general principles affecting this case we do not differ. You admit that if slaves, the property of American citizens, escape into British territories, it is not expected that they will be restored; and you may be well assured that there is no wish on our part that they should reach our shores, or that British possessions should be used as decoys for the violators of the laws of a friendly neighbor.

When these slaves do reach us, by whatever means, there is no alternative. The present state of British law is in this respect too well known to require repetition; nor need I remind you that it is exactly the same with the laws of every part of the United States where a state of slavery is not recognized; and that the slave put on shore at Nassau would be dealt with exactly as would a foreign slave landed, under any circumstances whatever, at Boston.

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But what constitutes the being within British dominion, from which these consequences are to follow? Is a vessel passing through the Bahama Channel, and forced involuntarily, either from storm or mutiny, into British waters, to be so considered? What power have the authorities of those islands to take cognizance of persons or property in such vessels? These are questions which you, sir, have discussed at great length, and with evident ability. Although you have advanced some propositions which rather surprise and startle me, I do not pretend to judge them; but what is very clear is, that great principles are involved in a discussion which it would ill become me lightly to enter upon; and I am confirmed by this consideration in wishing that the subject be referred to where it will be perfectly weighed and examined.

It behooves the authorities of our two governments well to guard themselves against establishing by their diplomatic intercourse false precedents and principles, and that they do not, for the purpose of meeting a passing difficulty, set examples which may hereafter mislead the world.

It is not intended on this occasion to consider in detail the particular instances which have given rise to these discussions. They have already been stated and explained. Our object is rather to look to the means of future prevention of such occurrences. That this may be obtained, I have little doubt, although we may not be able immediately to agree on the precise stipulations of a treaty. On the part of Great Britain, there are certain great principles too deeply rooted in the consciences and sympathies of the people for any minister to be able to overlook; and any engagement I might make in opposition to them would be instantly disavowed; but, at the same time that we maintain our own laws within our own territories, we are bound to respect those of our neighbors, and to listen to every possible suggestion of means of averting from them every annoyance and injury. I have great confidence that this may be effectually done in the present instance; but the case to be met and remedied is new, and must not be too hastily dealt with. You may, however, be assured that measures so important for the preservation of friendly intercourse between the two countries shall not be neglected.

In the mean time, I can engage that instructions shall be given to the governors of her majesty's colonies on the southern borders of the United States to execute their own laws with careful attention to the wish of their government to maintain good neighborhood, and that there shall be no officious interference with American vessels driven by accident or by violence into those ports. The laws and duties of hospitality shall be executed; and these seem neither to require nor to justify any fur-

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ther inquisition into the state of persons or things on board of vessels so situated than may be indispensable to enforce the observance of the municipal law of the colony, and the proper regulation of its harbors and waters.

A strict and careful attention to these rules, applied in good faith to all transactions as they arise, will, I hope and believe, without any abandonment of great and general principles, lead to the avoidance of any excitement or agitation on this very sensitive subject of slavery, and, consequently, of those irritating feelings which may have a tendency to bring into peril all the great interests connected with the maintenance of peace.

I further trust that friendly sentiments, and a conviction of the importance of cherishing them, will on all occasions lead the two countries to consider favorably any further arrangements which may be judged necessary for the reciprocal protection of their interests.

I hope, sir, that this explanation on this very important subject will be satisfactory to the President, and that he will see in it no diminution of that earnest desire, which you have been pleased to recognize in me, to perform my work of reconciliation and friendship; but that he will rather perceive in my suggestion, in this particular instance, that it is made with a well-founded hope of thereby better obtaining the object we have in view.

I beg to renew to you, sir, the assurances of my high consideration. ASHBURTON.

Hon. DANIEL WEBSTER, &c., &c., &c.

Mr. Webster to Lord Ashburton.

DEPARTMENT OF STATE, *Washington, August* 8, 1842.

MY LORD,—I have the honor to acknowledge the receipt of your lordship's note of the 6th instant, in answer to mine of the 1st, upon the subject of a stipulation for the better security of American vessels driven by accident or carried by force into the British West India ports.

The President would have been gratified if you had felt yourself at liberty to proceed at once to consider of some proper arrangement, by formal treaty, for this object; but there may be weight in the reasons which you urge for referring such mode of stipulation for consideration in London.

The President places his reliance on those principles of public law which were stated in my note to your lordship, and which are regarded as equally well founded and important; and on your lordship's engagement that instructions shall be given to the governors of her majesty's colonies to execute their own laws with careful attention to the wish of their government to maintain good neighborhood, and that there shall

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be no officious interference with American vessels driven by accident or by violence into those ports; that the laws and duties of hospitality shall be executed, and that these seem neither to require nor to justify any further inquisition into the state of persons or things on board of vessels so situated than may be indispensable to enforce the observance of the municipal law of the colony, and the proper regulation of its harbors and waters. He indulges the hope, nevertheless, that, actuated by a just sense of what is due to the mutual interests of the two countries, and the maintenance of a permanent peace between them, her majesty's government will not fail to see the importance of removing, by such further stipulations, by treaty or otherwise, as may be found to be necessary, all cause of complaint connected with this subject.

I have the honor to be, with high consideration, your lordship's obedient servant, DANIEL WEBSTER.

LORD ASHBURTON, &c., &c., &c.

IMPRESSMENT.

Mr. Webster to Lord Ashburton.

DEPARTMENT OF STATE, *Washington, August* 8, 1842.

MY LORD,—We have had several conversations on the subject of impressment, but I do not understand that your lordship has instructions from your government to negotiate upon it, nor does the government of the United States see any utility in opening such negotiation, unless the British government is prepared to renounce the practice in all future wars.

No cause has produced to so great an extent, and for so long a period, disturbing and irritating influences on the political relations of the United States and England, as the impressment of seamen by British cruisers from American merchant vessels.

From the commencement of the French Revolution to the breaking out of the war between the two countries in 1812, hardly a year elapsed without loud complaint and earnest remonstrance. A deep feeling of opposition to the right claimed, and to the practice exercised under it, and not unfrequently exercised without the least regard to what justice and humanity would have dictated, even if the right itself had been admitted, took possession of the public mind of America, and this feeling, it is well known, co-operated most powerfully with other causes to produce the state of hostilities which ensued.

At different periods, both before and since the war, negotiations have taken place between the two governments, with the hope of finding some means of quieting these complaints.

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At some times, the effectual abolition of the practice has been requested and treated of; at other times, its temporary suspension; and at other times, again, the limitation of its exercise and some security against its enormous abuses.

A common destiny has attended these efforts; they have all failed. The question stands at this moment where it stood fifty years ago. The nearest approach to a settlement was a convention proposed in 1803, and which had come to the point of signature, when it was broken off in consequence of the British government insisting that the *narrow seas* should be expressly excepted out of the sphere over which the contemplated stipulations against impressment should extend. The American minister, Mr. King, regarded this exception as quite inadmissible, and chose rather to abandon the negotiation than to acquiesce in the doctrine which it proposed to establish.

England asserts the right of impressing British subjects, in time of war, out of neutral merchant vessels, and of deciding by her visiting officers who, among the crews of such merchant vessels, are British subjects. She asserts this as a legal exercise of the prerogative of the crown; which prerogative is alleged to be founded on the English law of the perpetual and indissoluble allegiance of the subject, and his obligation, under all circumstances, and for his whole life, to render military service to the crown whenever required.

This statement, made in the words of eminent British jurists, shows at once that the English claim is far broader than the basis or platform on which it is raised. The law relied on is English law; the obligations insisted on are obligations existing between the crown of England and its subjects. This law and these obligations, it is admitted, may be such as England may choose they shall be. But, then, they must be confined to the parties. Impressment of seamen, out of and beyond English territory, and from on board the ships of other nations, is an interference with the rights of other nations; is further, therefore, than English prerogative can legally extend; and is nothing but an attempt to enforce the peculiar law of England beyond the dominions and jurisdiction of the crown. The claim asserts an extra territorial authority for the law of British prerogative, and assumes to exercise this extra territorial authority, to the manifest injury and annoyance of the citizens and subjects of other states, on board their own vessels on the high seas.

Every merchant vessel on the seas is rightfully considered as part of the territory of the country to which it belongs. The entry, therefore, into such vessel, being neutral, by a belligerent is an act of force, and is, *prima facie*, a wrong, a trespass, which can be justified only when done for some purpose,

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allowed to form a sufficient justification by the law of nations. But a British cruiser enters an American merchant vessel in order to take therefrom supposed British subjects; offering no justification, therefore, under the law of nations, but claiming the right under the law of England respecting the king's prerogative. This can not be defended. English soil, English territory, English jurisdiction, is the appropriate sphere for the operation of English law. The ocean is the sphere of the law of nations; and any merchant vessel on the seas is, by that law, under the protection of the laws of her own nation, and may claim immunity, unless in cases in which that law allows her to be entered or visited.

If this notion of perpetual allegiance, and the consequent power of the prerogative, was the law of the world; if it formed part of the conventional code of nations, and was usually practiced like the right of visiting neutral ships, for the purpose of discovering and seizing enemy property, then impressment might be defended as a common right, and there would be no remedy for the evil till the national code should be altered. But this is by no means the case. There is no such principle incorporated into the code of nations. The doctrine stands only as English law, not as a national law; and English law can not be of force beyond English dominion. Whatever duties or relations that law creates between the sovereign and his subjects can be enforced and maintained only within the realm, or proper possessions or territory of the sovereign. There may be quite as just a prerogative right to the property of subjects as to their personal services, in an exigency of the state; but no government thinks of controlling by its own laws property of its subjects situated abroad; much less does any government think of entering the territory of another power for the purpose of seizing such property and applying it to its own uses. As laws, the prerogatives of the crown of England have no obligation on persons or property domiciled or situated abroad.

"When, therefore," says an authority not unknown or unregarded on either side of the Atlantic, "we speak of the right of a state to bind its own native subjects every where, we speak only of its own claim and exercise of sovereignty over them when they return within its own territorial jurisdiction, and not of its right to compel or require obedience to such laws, on the part of other nations, within their own territorial sovereignty. On the contrary, every nation has an exclusive right to regulate persons and things within its own territory, according to its sovereign will and public polity."

The good sense of these principles, their remarkable pertinency to the subject now under consideration, and the extra-

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ordinary consequences resulting from the British doctrine, are signally manifested by that which we see taking place every day. England acknowledges herself overburdened with population of the poorer classes. Every instance of the emigration of persons of those classes is regarded by her as a benefit. England, therefore, encourages emigration; means are notoriously supplied to emigrants, to assist their conveyance, from public funds; and the New World, and most especially these United States, receive the many thousands of her subjects thus ejected from the bosom of their native land by the necessities of their condition. They come away from poverty and distress in over-crowded cities, to seek employment, comfort, and new homes in a country of free institutions, possessed by a kindred race, speaking their own language, and having laws and usages in many respects like those to which they have been accustomed; and a country which, upon the whole, is found to possess more attractions for persons of their character and condition than any other on the face of the globe. It is stated that, in the quarter of the year ending with June last, more than twenty-six thousand emigrants left the single port of Liverpool for the United States, being four or five times as many as left the same port within the same period for the British colonies and all other parts of the world. Of these crowds of emigrants, many arrive in our cities in circumstances of great destitution, and the charities of the country, both public and private, are severely taxed to relieve their immediate wants. In time they mingle with the new community in which they find themselves, and seek means of living; some find employment in the cities, others go to the frontiers, to cultivated lands reclaimed from the forest; and a greater or less number of the residue, becoming in time naturalized citizens, enter into the merchant service under the flag of their adopted country.

Now, my lord, if war should break out between England and a European power, can any thing be more unjust, any thing more irreconcilable to the general sentiments of mankind, than that England should seek out these persons, thus encouraged by her, and compelled by their own condition to leave their native homes, tear them away from their new employments, their new political relations, and their domestic connections, and force them to undergo the dangers and hardships of military service for a country which has thus ceased to be their own country? Certainly, certainly, my lord, there can be but one answer to this question. Is it not far more reasonable that England should either prevent such emigration of her subjects, or that, if she encourage and promote it, she should leave them, not to the embroilment of a double and a contradictory alle-

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giance, but to their own voluntary choice, to form such relations, political or social, as they see fit in the country where they are to find their bread, and to the laws and institutions of which they are to look for defense and protection?

A question of such serious importance ought now to be put at rest. If the United States give shelter and protection to those whom the policy of England annually casts upon their shores; if, by the benign influences of their government and institutions, and by the happy condition of the country, those emigrants become raised from poverty to comfort, finding it easy even to become landholders, and being allowed to partake in the enjoyment of all civil rights; if all this may be done (and all this is done, under the countenance and encouragement of England herself), is it not high time, my lord, that, yielding that which had its origin in feudal ideas as inconsistent with the present state of society, and especially with the intercourse and relations subsisting between the Old World and the New, England should, at length, formally disclaim all right to the services of such persons, and renounce all control over their conduct?

But impressment is subject to objections of a much wider range. If it could be justified in its application to those who are declared to be its only objects, it still remains true that, in its exercise, it touches the political rights of other governments, and endangers the security of their own native subjects and citizens. The sovereignty of the state is concerned in maintaining its exclusive jurisdiction and possession over its merchant ships on the seas, except so far as the law of nations justifies intrusion upon that possession for special purposes; and all experience has shown that no member of a crew, wherever born, is safe against impressment when a ship is visited.

The evils and injuries resulting from the actual practice can hardly be overstated, and have ever proved themselves to be such as should lead to its relinquishment, even if it were founded in any defensible principle. The difficulty of discriminating between English subjects and American citizens has always been found to be great, even when an honest purpose of discrimination has existed. But the lieutenant of a man-of-war, having necessity for men, is apt to be a summary judge, and his decisions will be quite as significant of his own wants and his own power as of the truth and justice of the case. An extract from a letter of Mr. King, of the 13th of April, 1797, to the American Secretary of State, shows something of the enormous extent of these wrongful seizures:

"Instead of a few, and these in many instances equivocal cases, I have," says he, "since the month of July past, made application for the discharge, from British men-of-war, of two

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hundred and seventy-one seamen, who, stating themselves to be Americans, have claimed my interference. Of this number eighty-six have been ordered by the Admiralty to be discharged, thirty-seven more have been detained as British subjects or as American volunteers, or for want of proof that they are Americans, and to my applications for the discharge of the remaining one hundred and forty-eight I have received no answer; the ships on board of which these seamen were detained having, in many instances, sailed before an examination was made in consequence of my application.

"It is certain that some of those who have applied to me are not American citizens, but the exceptions are, in my opinion, few, and the evidence, exclusive of certificates, has been such as, in most cases, to satisfy me that the applicants were real Americans, who have been forced into the British service, and who, with singular constancy, have generally persevered in refusing pay or bounty, though in some instances they have been in service more than two years."

But the injuries of impressment are by no means confined to its immediate subjects or the individuals on whom it is practiced. Vessels suffer from the weakening of their crews, and voyages are often delayed, and not unfrequently broken up, by subtraction from the number of necessary hands by impressment. And what is still of greater and more general moment, the fear of impressment has been found to create great difficulty in obtaining sailors for the American merchant service in times of European war. Sea-faring men, otherwise inclined to enter into that service, are, as experience has shown, deterred by the fear of finding themselves ere long in compulsory military service in British ships of war. Many instances have occurred, fully established in proof, in which raw seamen, natives of the United States, fresh from the fields of agriculture, entering for the first time on shipboard, have been impressed before they made the land, placed on the decks of British men-of-war, and compelled to serve for years before they could obtain their release, or revisit their country and their homes. Such instances become known, and their effect in discouraging young men from engaging in the merchant service of their country can neither be doubted nor wondered at. More than all, my lord, the practice of impressment, whenever it has existed, has produced not conciliation and good feeling, but resentment, exasperation, and animosity between the two great commercial countries of the world.

In the calm and quiet which have succeeded the late war—a condition so favorable for dispassionate consideration—England herself has evidently seen the harshness of impressment, even when exercised on seamen in her own merchant service,

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and she has adopted measures calculated, if not to renounce the power or to abolish the practice, yet, at least, to supersede its necessity by other means of manning the royal navy more compatible with justice and the rights of individuals, and far more conformable to the spirit and sentiments of the age.

Under these circumstances, the government of the United States has used the occasion of your lordship's pacific mission to review this whole subject, and to bring it to your notice and that of your government. It has reflected on the past, pondered the condition of the present, and endeavored to anticipate, so far as might be in its power, the probable future; and I am now to communicate to your lordship the result of these deliberations.

The American government, then, is prepared to say that the practice of impressing seamen from American vessels can not hereafter be allowed to take place. That practice is founded on principles which it does not recognize, and is invariably attended by consequences so unjust, so injurious, and of such formidable magnitude, as can not be submitted to.

In the early disputes between the two governments on this so long-contested topic, the distinguished person to whose hands were first intrusted the seals of this department, declared, that "the simplest rule will be, that the vessel being American, shall be evidence that the seamen on board are such."

Fifty years' experience, the utter failure of many negotiations, and a careful reconsideration, now had, of the whole subject, at a moment when the passions are laid, and no present interest or emergency exists to bias the judgment, have fully convinced this government that this is not only the simplest and best, but the only rule, which can be adopted and observed, consistently with the rights and honor of the United States and the security of their citizens. That rule announces, therefore, what will hereafter be the principle maintained by their government. In every regularly-documented American merchant vessel the crew who navigate it will find their protection in the flag which is over them.

This announcement is not made, my lord, to revive useless recollections of the past, nor to stir the embers from fires which have been, in a great degree, smothered by many years of peace. Far otherwise. Its purpose is to extinguish those fires effectually, before new incidents arise to fan them into flame. The communication is in the spirit of peace, and for the sake of peace, and springs from a deep and conscientious conviction that high interests of both nations require this so long-contested and controverted subject now to be finally put to rest. I persuade myself, my lord, that you will do justice to this frank and sincere avowal of motives, and that you will

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communicate your sentiments in this respect to your government.

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This letter closes, my lord, on my part, our official correspondence; and I gladly use the occasion to offer you the assurance of my high and sincere regard.

DANIEL WEBSTER.

LORD ASHBURTON, &c., &c., &c.

Lord Ashburton to Mr. Webster.

WASHINGTON, *August* 9, 1842.

SIR;—The note you did me the honor of addressing me the 8th instant, on the subject of impressment, shall be transmitted without delay to my government, and will, you may be assured, receive from them the deliberate attention which its importance deserves.

The object of my mission was mainly the settlement of existing subjects of difference; and no differences have or could have arisen of late years with respect to impressment, because the practice has, since the peace, wholly ceased, and can not, consistently with existing laws and regulations for manning her majesty's navy, be, under the present circumstances, renewed.

Desirous, however, of looking far forward into futurity to anticipate even possible causes of disagreement, and sensible of the anxiety of the American people on this grave subject of past irritation, I should be sorry in any way to discourage the attempt at some settlement of it; and, although without authority to enter upon it here during the limited continuance of my mission, I entertain a confident hope that this task may be accomplished, when undertaken, with the spirit of candor and conciliation which has marked all our late negotiations.

It not being our intention to endeavor now to come to any agreement on this subject, I may be permitted to abstain from noticing at length your very ingenious arguments relating to it, and from discussing the graver matters of constitutional and international law growing out of them. These sufficiently show that the question is one requiring calm consideration; though I must, at the same time, admit that they prove a strong necessity of some settlement for the preservation of that good understanding which, I trust, we may flatter ourselves that our joint labors have now succeeded in establishing.

I am well aware that the laws of our two countries maintain opposite principles respecting allegiance to the sovereign. America, receiving every year by thousands the emigrants of Europe, maintains the doctrine suitable to her condition of the right of transferring allegiance at will. The laws of Great Britain have maintained from all time the opposite doctrine. The duties of allegiance are held to be indefeasible; and it is

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believed that this doctrine, under various modifications, prevails in most, if not in all, the civilized states of Europe.

Emigration, the modern mode by which the population of the world peaceably finds its level, is for the benefit of all, and eminently for the benefit of humanity. The fertile deserts of America are gradually advancing to the highest state of cultivation and production, while the emigrant acquires comfort which his own confined home could not afford him.

If there were any thing in our laws or our practice on either side tending to impede this march of providential humanity, we could not be too eager to provide a remedy; but as this does not appear to be the case, we may safely leave this part of the subject without indulging in abstract speculations having no material practical application to matters in discussion between us.

But it must be admitted that a serious practical question does arise, or, rather, has existed, from practices formerly attending the mode of manning the British navy in times of war. The principle is, that all subjects of the crown are, in case of necessity, bound to serve their country, and the sea-faring man is naturally taken for the naval service. This is not, as is sometimes supposed, any arbitrary principle of monarchical government, but one founded on the natural duty of every man to defend the life of his country; and all the analogy of your laws would lead to the conclusion that the same principle would hold good in the United States if their geographical position did not make its application unnecessary.

The very anomalous condition of the two countries with relation to each other here creates a serious difficulty. Our people are not distinguishable; and, owing to the peculiar habits of sailors, our vessels are very generally manned from a common stock. It is difficult, under these circumstances, to execute laws which at times have been thought to be essential for the existence of the country, without risk of injury to others. The extent and importance of those injuries, however, are so formidable that it is admitted that some remedy should, if possible, be applied; at all events, it must be fairly and honestly attempted. It is true that during the continuance of peace no practical grievance can arise; but it is also true that it is for that reason the proper season for the calm and deliberate consideration of an important subject. I have much reason to hope that a satisfactory arrangement respecting it may be made, so as to set at rest all apprehension and anxiety; and I will only further repeat the assurance of the sincere disposition of my government favorably to consider all matters having for their object the promoting and maintaining undisturbed kind and friendly feelings with the United States.

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I beg, sir, on this occasion of closing the correspondence with you connected with my mission, to express the satisfaction I feel at its successful termination, and to assure you of my high consideration and personal esteem and regard.

ASHBURTON.

Hon. DANIEL WEBSTER, &c., &c., &c.

INVIOLABILITY OF NATIONAL TERRITORY.

CASE OF THE "CAROLINE."

Mr. Webster to Lord Ashburton.

DEPARTMENT OF STATE, *Washington, July 27, 1842.*

MY LORD,—In relation to the case of the "Caroline," which we have heretofore made the subject of conference, I have thought it right to place in your hands an extract of a letter from this department to Mr. Fox, of the 24th of April, 1841, and an extract from the message of the President of the United States to Congress at the commencement of its present session. These papers you have, no doubt, already seen; but they are, nevertheless, now communicated, as such communication is considered a ready mode of presenting the view which this government entertains of the destruction of that vessel.

The act of which the government of the United States complains is not to be considered as justifiable or unjustifiable, as the question of the lawfulness or unlawfulness of the employment in which the "Caroline" was engaged may be decided the one way or the other. That act is of itself a wrong, and an offense to the sovereignty and the dignity of the United States, being a violation of their soil and territory—a wrong for which, to this day, no atonement, or even apology, has been made by her majesty's government. Your lordship can not but be aware that self-respect, the consciousness of independence and national equality, and a sensitiveness to whatever may touch the honor of the country—a sensitiveness which this government will ever feel and ever cultivate—make this a matter of high importance, and I must be allowed to ask for it your lordship's grave consideration.

I have the honor to be, my lord, your lordship's most obedient servant,

DANIEL WEBSTER.

LORD ASHBURTON, &c., &c., &c.

Extract of a letter from Mr. Webster to Mr. Fox, dated April 24, 1841.

* * * * * * * *

The undersigned has now to signify to Mr. Fox that the government of the United States has not changed the opinion

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which it has heretofore expressed to her majesty's government of the character of the act of destroying the "Caroline."

It does not think that that transaction can be justified by any reasonable application or construction of the right of self-defense under the law of nations. It is admitted that a just right of self-defense attaches always to nations as well as to individuals, and is equally necessary for the preservation of both. But the extent of this right is a question to be judged of by the circumstances of each particular case; and when its alleged exercise has led to the commission of hostile acts within the territory of a power at peace, nothing less than a clear and absolute necessity can afford ground of justification. Not having up to this time been made acquainted with the views and reasons at length which have led her majesty's government to think the destruction of the "Caroline" justifiable, as an act of self-defense, the undersigned, earnestly renewing the remonstrance of this government against the transaction, abstains for the present from any extended discussion of the question. But it is deemed proper, nevertheless, not to omit to take some notice of the general grounds of justification stated by her majesty's government in their instruction to Mr. Fox.

Her majesty's government have instructed Mr. Fox to say, that they are of opinion that the transaction which terminated in the destruction of the "Caroline" was a justifiable employment of force for the purpose of defending the British territory from the unprovoked attack of a band of British rebels and American pirates, who, having been "permitted" to arm and organize themselves within the territory of the United States, had actually invaded a portion of the territory of her majesty.

The President can not suppose that her majesty's government, by the use of these terms, meant to be understood as intimating that those acts, violating the laws of the United States and disturbing the peace of the British territory, were done under any degree of countenance from this government, or were regarded by it with indifference, or that, under the circumstances of the case, they could have been prevented by any ordinary course of proceeding. Although he regrets that, by using the term "permitted," a possible inference of that kind might be raised; yet such an inference, the President is willing to believe, would be quite unjust to the intentions of the British government.

That on a line of frontier, such as separates the United States from her Britannic majesty's North American provinces—a line long enough to divide the whole of Europe into halves—irregularities, violences, and conflicts should sometimes occur, equally against the will of both governments, is certainly easily to be supposed. This may be more possible, perhaps, in regard

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to the United States, without any reproach to their government, since their institutions entirely discourage the keeping up of large standing armies in time of peace, and their situation happily exempts them from the necessity of maintaining such expensive and dangerous establishments. All that can be expected from either government, in these cases, is good faith, a sincere desire to preserve peace and do justice, the use of all proper means of prevention, and that, if offenses can not, nevertheless, be always prevented, the offenders shall still be justly punished. In all these respects, this government acknowledges no delinquency in the performance of its duties.

Her majesty's government are pleased, also, to speak of those American citizens who took part with persons in Canada, engaged in an insurrection against the British government, as "American pirates." The undersigned does not admit the propriety or justice of this designation. If citizens of the United States fitted out, or were engaged in fitting out, a military expedition from the United States, intended to act against the British government in Canada, they were clearly violating the laws of their own country, and exposing themselves to the just consequences which might be inflicted on them if taken within the British dominions. But, notwithstanding this, they were certainly not pirates, nor does the undersigned think that it can advance the purpose of fair and friendly discussion, or hasten the accommodation of national difficulties, so to denominate them. Their offense, whatever it was, had no analogy to cases of piracy. Supposing all that is alleged against them to be true, they were taking a part in what they regarded as a civil war, and they were taking a part on the side of the rebels. Surely England herself has not regarded persons thus engaged as deserving the appellation which her majesty's government bestows on these citizens of the United States.

It is quite notorious that, for the greater part of the last two centuries, subjects of the British crown have been permitted to engage in foreign wars, both national and civil, and in the latter in every stage of their progress; and yet it has not been imagined that England has at any time allowed her subjects to turn pirates. Indeed, in our own times, not only have individual subjects of that crown gone abroad to engage in civil wars, but we have seen whole regiments openly recruited, embodied, armed, and disciplined in England, with the avowed purpose of aiding a rebellion against a nation with which England was at peace; although it is true that, subsequently, an act of Parliament was passed to prevent transactions so nearly approaching to public war, without license from the crown.

It may be said that there is a difference between the case of a civil war arising from a disputed succession, or a protracted

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revolt of a colony against the mother country, and the case of the fresh outbreak or commencement of a rebellion. The undersigned does not deny that such a distinction may, for certain purposes, be deemed well founded. He admits that a government, called upon to consider its own rights, interests, and duties, when civil wars break out in other countries, may decide on all the circumstances of the particular case upon its own existing stipulations, on probable results, on what its own security requires, and on many other considerations. It may be already bound to assist one party, or it may become bound, if it so chooses, to assist the other, and to meet the consequences of such assistance.

But whether the revolt be recent or long continued, they who join those concerned in it, whatever may be their offense against their own country, or however they may be treated, if taken with arms in their hands in the territory of the government against which the standard of revolt is raised, can not be denominated pirates without departing from all ordinary use of language in the definition of offenses. A cause which has so foul an origin as piracy can not, in its progress or by its success, obtain a claim to any degree of respectability or tolerance among nations; and civil wars, therefore, are not understood to have such a commencement.

It is well known to Mr. Fox that authorities of the highest eminence in England, living and dead, have maintained that the general law of nations does not forbid the citizens or subjects of one government from taking part in the civil commotions of another. There is some reason, indeed, to think that such may be the opinion of her majesty's government at the present moment.

The undersigned has made these remarks from the conviction that it is important to regard established distinctions, and to view the acts and offenses of individuals in the exactly proper light. But it is not to be inferred that there is, on the part of this government, any purpose of extenuating in the slightest degree the crimes of those persons, citizens of the United States, who have joined in military expeditions against the British government in Canada. On the contrary, the President directs the undersigned to say, that it is his fixed resolution that all such disturbers of the national peace, and violators of the laws of their country, shall be brought to exemplary punishment. Nor will the fact that they are instigated and led on to these excesses by British subjects, refugees from the provinces, be deemed any excuse or palliation; although it is well worthy of being remembered that the prime movers of these disturbances on the borders are subjects of the queen, who come within the territories of the United States, seeking to enlist the sym-

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pathies of their citizens by all the motives which they are able to address to them on account of grievances, real or imaginary. There is no reason to believe that the design of any hostile movement from the United States against Canada has commenced with citizens of the United States. The true origin of such purposes and such enterprises is on the other side of the line. But the President's resolution to prevent these transgressions is not, on that account, the less strong. It is taken, not only in conformity to his duty under the provisions of existing laws, but in full consonance with the established principles and practice of this government.

The government of the United States has not from the first fallen into the doubts, elsewhere entertained, of the true extent of the duties of neutrality. It has held that, however it may have been in less enlightened ages, the just interpretation of the modern law of nations is, that neutral states are bound to be strictly neutral; and that it is a manifest and gross impropriety for individuals to engage in the civil conflicts of other states, and thus to be at war while their government is at peace. War and peace are high national relations, which can properly be established or changed only by nations themselves.

The United States have thought, also, that the salutary doctrine of non-intervention by one nation with the affairs of others is liable to be essentially impaired if, while government refrains from interference, interference is still allowed to its subjects, individually or in masses. It may happen, indeed, that persons choose to leave their country, emigrate to other regions, and settle themselves on uncultivated lands in territories belonging to other states. This can not be prevented by governments which allow the emigration of their subjects and citizens; and such persons, having voluntarily abandoned their own country, have no longer claim to its protection, nor is it longer responsible for their acts. Such cases, therefore, if they occur, show no abandonment of the duty of neutrality.

The government of the United States has not considered it as sufficient to confine the duties of neutrality and non-interference to the case of governments whose territories lie adjacent to each other. The application of the principle may be more necessary in such cases, but the principle itself they regard as being the same, if those territories be divided by half the globe. The rule is founded in the impropriety and danger of allowing individuals to make war on their own authority, or, by mingling themselves in the belligerent operations of other nations, to run the hazard of counteracting the policy or embroiling the relations of their own government. And the United States have been the first among civilized nations to enforce

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the observance of this just rule of neutrality and peace, by special and adequate legal enactments. In the infancy of this government, on the breaking out of the European wars which had their origin in the French Revolution, Congress passed laws, with severe penalties, for preventing the citizens of the United States from taking part in those hostilities.

By these laws, it prescribed to the citizens of the United States what it understood to be their duty, as neutrals, according to the law of nations, and the duty, also, which they owed to the interest and honor of their own country.

At a subsequent period, when the American colonies of a European power took up arms against their sovereign, Congress, not diverted from the established system of the government by any temporary considerations, not swerved from its sense of justice and of duty by any sympathies which it might naturally feel for one of the parties, did not hesitate, also, to pass acts applicable to the case of colonial insurrection and civil war. And these provisions of law have been continued, revised, amended, and are in full force at the present moment. Nor have they been a dead letter, since it is well known that exemplary punishments have been inflicted on those who have transgressed them. It is known, indeed, that heavy penalties have fallen on individuals (citizens of the United States) engaged in this very disturbance in Canada, with which the destruction of the Caroline was connected. And it is in Mr. Fox's knowledge, also, that the act of Congress of March 10, 1838, was passed for the precise purpose of more effectually restraining military enterprises from the United States into the British provinces, by authorizing the use of the most sure and decisive preventive means. The undersigned may add, that it stands on the admission of very high British authority, that during the recent Canadian troubles, although bodies of adventurers appeared on the border, making it necessary for the people of Canada to keep themselves in a state prepared for self-defense, yet that these adventurers were acting by no means in accordance with the feeling of the great mass of the American people, or of the government of the United States.

This government, therefore, not only holds itself above reproach in every thing respecting the preservation of neutrality, the observance of the principle of non-intervention, and the strictest conformity, in these respects, to the rules of international law, but it doubts not that the world will do it the justice to acknowledge that it has set an example not unfit to be followed by others; and that by its steady legislation on this most important subject, it has done something to promote peace and good neighborhood among nations, and to advance the civilization of mankind.

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The undersigned trusts that when her Britannic majesty's government shall present the grounds at length on which they justify the local authorities of Canada in attacking and destroying the "Caroline," they will consider that the laws of the United States are such as the undersigned has now represented them, and that the government of the United States has always manifested a sincere disposition to see those laws effectually and impartially administered. If there have been cases in which individuals, justly obnoxious to punishment, have escaped, this is no more than happens in regard to other laws.

Under these circumstances, and under those immediately connected with the transaction itself, it will be for her majesty's government to show upon what state of facts and what rules of national law, the destruction of the "Caroline" is to be defended. It will be for that government to show a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation. It will be for it to show, also, that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable or excessive; since the act, justified by the necessity of self-defense, must be limited by that necessity, and kept clearly within it. It must be shown that admonition or remonstrance to the persons on board the "Caroline" was impracticable, or would have been unavailing. It must be shown that daylight could not be waited for; that there could be no attempt at discrimination between the innocent and the guilty; that it would not have been enough to seize and detain the vessel; but that there was a necessity, present and inevitable, for attacking her in the darkness of the night, while moored to the shore, and while unarmed men were asleep on board, killing some and wounding others, and then drawing her into the current, above the cataract, setting her on fire, and, careless to know whether there might not be in her the innocent with the guilty, or the living with the dead, committing her to a fate which fills the imagination with horror. A necessity for all this the government of the United States can not believe to have existed.

All will see that, if such things be allowed to occur, they must lead to bloody and exasperated war. And when an individual comes into the United States from Canada, and to the very place on which this drama was performed, and there chooses to make public and vainglorious boast of the part he acted in it, it is hardly wonderful that great excitement should be created, and some degree of commotion arise.

This republic does not wish to disturb the tranquillity of the world; its object is peace, its policy peace. It seeks no ag-

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grandizement by foreign conquest, because it knows that no foreign acquisitions could augment its power and importance so rapidly as they are already advancing by its own natural growth, under the propitious circumstances of its situation. But it can not admit that its government has not both the will and the power to preserve its own neutrality, and to enforce the observances of its own laws upon its own citizens. It is jealous of its rights, and among others, and most especially, of the right of the absolute immunity of its territory against aggression from abroad; and these rights it is the duty and determination of this government fully and at all times to maintain, while it will at the same time as scrupulously refrain from infringing on the rights of others.

The President instructs the undersigned to say, in conclusion, that he confidently trusts that this and all other questions of difference between the two governments will be treated by both in the full exercise of such a spirit of candor, justice, and mutual respect, as shall give assurance of the long continuance of peace between the two countries.

The undersigned avails himself of this opportunity to assure Mr. Fox of his high consideration. DANIEL WEBSTER.

HENRY S. FOX, Esq., *Envoy Extraordinary and Minister Plenipotentiary of Great Britain, &c.*

Extract from the Message of the President to Congress at the commencement of the Second Session of the 27th Congress.

I regret that it is not in my power to make known to you an equally satisfactory conclusion in the case of the "Caroline" steamer, with the circumstances connected with the destruction of which, in December, 1837, by an armed force fitted out in the province of Upper Canada, you are already made acquainted. No such atonement as was due for the public wrong done to the United States by this invasion of her territory, so wholly irreconcilable with her rights as an independent power, has yet been made. In the view taken by this government, the inquiry whether the vessel was in the employment of those who were prosecuting an unauthorized war against that province, or was engaged by the owner in the business of transporting passengers to and from Navy Island, in hopes of private gain, which was most probably the case, in no degree alters the real question at issue between the two governments. This government can never concede to any foreign government the power, except in a case of the most urgent and extreme necessity, of invading its territory, either to arrest the persons or destroy the property of those who may have violated the municipal laws of such foreign government, or have disregarded their obligations arising under the law of nations.

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The territory of the United States must be regarded as sacredly secure against all such invasions, until they shall voluntarily acknowledge inability to acquit themselves of their duties to others; and in announcing this sentiment, I do but affirm a principle which no nation on earth would be more ready to vindicate, at all hazards, than the people and government of Great Britain. If, upon a full investigation of all the facts, it shall appear that the owner of the "Caroline" was governed by a hostile intent, or had made common cause with those who were in the occupancy of Navy Island, then, so far as he is concerned, there can be no claim to indemnity for the destruction of his boat, which this government would feel itself bound to prosecute, since he would have acted not only in derogation of the rights of Great Britain, but in clear violation of the laws of the United States. But that is a question which, however settled, in no manner involves the higher consideration of the violation of territorial sovereignty and jurisdiction. To recognize it as an admissible practice, that each government, in its turn, upon any sudden and unauthorized outbreak, which, on a frontier the extent of which renders it impossible for either to have an efficient force on every mile of it, and which outbreak, therefore, neither may be able to suppress in a day, may take vengeance into its own hands, and without even a remonstrance, and in the absence of any pressing or overruling necessity, may invade the territory of the other, would inevitably lead to results equally to be deplored by both. When border collisions come to receive the sanction, or to be made on the authority of either government, general war must be the inevitable result. While it is the ardent desire of the United States to cultivate the relations of peace with all nations, and to fulfill all the duties of good neighborhood toward those who possess territories adjoining their own, that very desire would lead them to deny the right of any foreign power to invade their boundary with an armed force. The correspondence between the two governments on this subject will, at a future day of your session, be submitted to your consideration; and, in the mean time, I can not but indulge the hope that the British government will see the propriety of renouncing, as a rule of future action, the precedent which has been set in the affair at Schlosser.

Lord Ashburton to Mr. Webster.

WASHINGTON, *July* 28, 1842.

SIR,—In the course of our conferences on the several subjects of difference which it was the object of my mission to endeavor to settle, the unfortunate case of the Caroline, with its attendant consequences, could not escape our attention; for although it

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is not of a description to be susceptible of any settlement by a convention or treaty, yet, being connected with the highest considerations of national honor and dignity, it has given rise at times to deep excitements, so as more than once to endanger the maintenance of peace.

The note you did me the honor of addressing me on the 27th instant reminds me that, however disposed your government might be to be satisfied with the explanations which it has been my duty to offer, the natural anxiety of the public mind requires that these explanations should be more durably recorded in our correspondence, and you send me a copy of your note to Mr. Fox, her Britannic majesty's minister here, and an extract from the speech of the President of the United States to Congress at the opening of the present session, as a ready mode of presenting the view entertained on this subject by the government of the United States.

It is so far satisfactory to perceive that we are perfectly agreed as to the general principles of international law applicable to this unfortunate case. Respect for the inviolable character of the territory of independent nations is the most essential foundation of civilization. It is useless to strengthen a principle so generally acknowledged by any appeal to authorities on international law, and you may be assured, sir, that her majesty's government set the highest possible value on this principle, and are sensible of their duty to support it by their conduct and example, for the maintenance of peace and order in the world. If a sense of moral responsibility were not a sufficient security for their observance of this duty toward all nations, it will be readily believed that the most common dictates of interest and policy would lead to it in the case of a long conterminous boundary of some thousand miles, with a country of such great and growing power as the United States of America, inhabited by a kindred race, gifted with all its activity, and all its susceptibility on points of national honor.

Every consideration, therefore, leads us to set as highly as your government can possibly do, this paramount obligation of reciprocal respect for the independent territory of each. But however strong this duty may be, it is admitted by all writers, by all jurists, by the occasional practice of all nations, not excepting your own, that a strong, overpowering necessity may arise, when this great principle may and must be suspended. It must be so for the shortest possible period, during the continuance of an admitted overruling necessity, and strictly confined within the narrowest limits imposed by that necessity. Self-defense is the first law of our nature, and it must be recognized by every code which professes to regulate the condition

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and relations of man. Upon this modification, if I may so call it, of the great general principle, we seem also to be agreed; and on this part of the subject I have done little more than repeat the sentiments, though in less forcible language, admitted and maintained by you in the letter to which you refer me.

Agreeing, therefore, on the general principle, and on the possible exception to which it is liable, the only question between us is whether this occurrence came within the limits fairly to be assigned to such exception—whether, to use your words, there was "that necessity of self-defense, instant, overwhelming, leaving no choice of means," which preceded the destruction of the Caroline while moored to the shore of the United States. Give me leave to say, sir, with all possible admiration of your very ingenious discussion of the general principles which are supposed to govern the right and practice of interference by the people of one country in the wars and quarrels of others, that this part of your argument is little applicable to our immediate case. If Great Britain, America, or any other country suffer their people to fit out expeditions to take part in distant quarrels, such conduct may, according to the circumstances of each case, be justly matter of complaint; and perhaps these transactions have generally been in late times too much overlooked or connived at. But the case we are considering is of a wholly different description, and may be best determined by answering the following question: Supposing a man standing on ground where you have no legal right to follow him, has a weapon long enough to reach you, and is striking you down and endangering your life, how long are you bound to wait for the assistance of the authority having the legal power to relieve you? or, to bring the facts more immediately home to the case, if cannon are moving and setting up in a battery which can reach you, and are actually destroying life and property by their fire, if you have remonstrated for some time without effect, and see no prospect of relief, when begins your right to defend yourself, should you have no other means of doing so than by seizing your assailant on the verge of a neutral territory?

I am unwilling to recall to your recollection the particulars of this case, but I am obliged very shortly to do so, to show what was, at the time, the extent of the existing justification; for upon this entirely depends the question whether a gross insult has or has not been offered to the government and people of the United States.

After some tumultuous proceedings in Upper Canada, which were of short duration, and were suppressed by the militia of the country, the persons criminally concerned in them took refuge in the neighboring state of New York, and, with a very

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large addition to their numbers openly collected, invaded the Canadian territory, taking possession of Navy Island.

This invasion took place on the 16th of December, 1837; a gradual accession of numbers and of military ammunition continued openly, and though under the sanction of no public authority, at least with no public hinderance, until the 29th of the same month, when several hundred men were collected, and twelve pieces of ordnance, which could only have been procured from some public store or arsenal, were actually mounted on Navy Island, and were used to fire within easy range upon the unoffending inhabitants of the opposite shore. Remonstrances, wholly ineffectual, were made; so ineffectual, indeed, that a militia regiment, stationed on the neighboring American island, looked on without any attempt at interference, while shots were fired from the American island itself. This important fact stands on the best American authority, being stated in a letter to Mr. Forsyth, of the 6th of February, 1838, of Mr. Benton, attorney of the United States, the gentleman sent by your government to inquire into the facts of the case, who adds, very properly, that he makes the statement "with deep regret and mortification."

This force, formed of all the reckless and mischievous people of the border, formidable from their numbers and from their armament, had in their pay, and as part of their establishment, this steam-boat Caroline, the important means and instrument by which numbers and arms were hourly increasing. I might safely put it to any candid man acquainted with the existing state of things, to say whether the military commander in Canada had the remotest reason, on the 29th of December, to expect to be relieved from this state of suffering by the protective intervention of any American authority. How long could a government having the paramount duty of protecting its own people be reasonably expected to wait for what they had then no reason to expect? What would have been the conduct of American officers? what has been their conduct under circumstances much less aggravated? I would appeal to you, sir, to say whether the facts which you say would alone justify this act, viz., "a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation," were not applicable to this case in as high a degree as they ever were to any case of a similar description in the history of nations.

Nearly five years are now past since this occurrence; there has been time for the public to deliberate upon it calmly, and I believe I may take it to be the opinion of candid and honorable men that the British officers who executed this transaction, and their government who approved it, intended no slight or disre-

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spect to the sovereign authority of the United States. That they intended no such disrespect I can most solemnly affirm, and I trust it will be admitted that no inference to the contrary can fairly be drawn, even by the most susceptible on points of national honor.

Notwithstanding my wish that the explanation I had to make might not revive in any degree any feelings of irritation, I do not see how I could treat this subject without this short recital of facts, because the proof that no disrespect was intended is mainly to be looked for in the extent of the justification.

There remains only a point or two which I should wish to notice, to remove in some degree the impression which your rather highly-colored description of this transaction is calculated to make. The mode of telling a story often tends to distort facts, and in this case more than in any other it is important to arrive at plain, unvarnished truth.

It appears from every account that the expedition was sent to capture the Caroline when she was expected to be found on the British ground of Navy Island, and that it was only owing to the orders of the rebel leader being disobeyed that she was not so found. When the British officer came round the point of the island in the night, he first discovered that the vessel was moored to the other shore. He was not by this deterred from making the capture, and his conduct was approved. But you will perceive that there was here, most decidedly, the case of justification mentioned in your note, that there should be "no moment left for deliberation." I mention this circumstance to show, also, that the expedition was not planned with a premeditated purpose of attacking the enemy within the jurisdiction of the United States, but that the necessity of so doing arose from altered circumstances at the moment of execution.

I have only further to notice the highly-colored picture drawn in your note of the facts attending the execution of this service. Some importance is attached to the attack having been made in the night, and the vessel having been set on fire and floated down the falls of the river; and it is insinuated, rather than asserted, that there was carelessness as to the lives of the persons on board. The account given by the distinguished officer who commanded the expedition distinctly refutes, or satisfactorily explains these assertions. The time of night was purposely selected as most likely to insure the execution with the least loss of life; and it is expressly stated that, the strength of the current not permitting the vessel to be carried off, and it being necessary to destroy her by fire, she was drawn into the stream for the express purpose of preventing injury to persons or property of the inhabitants at Schlosser.

I would willingly have abstained from a return to the facts

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of this transaction—my duty being to offer those explanations and assurances which may lead to satisfy the public mind, and to the cessation of all angry feeling—but it appeared to me that some explanation of parts of the case, apparently misunderstood, might be of service for this purpose.

Although it is believed that a candid and impartial consideration of the whole history of this unfortunate event will lead to the conclusion that there were grounds of justification as strong as were ever presented in such cases, and, above all, that no slight of the authority of the United States was ever intended; yet it must be admitted that there was, in the hurried execution of this necessary service, a violation of territory; and I am instructed to assure you that her majesty's government consider this as a most serious fact, and that, far from thinking that an event of this kind should be lightly risked, they would unfeignedly deprecate its recurrence. Looking back to what passed at this distance of time, what is, perhaps, most to be regretted is, that some explanation and apology for this occurrence was not immediately made; this, with a frank explanation of the necessity of the case, might and probably would have prevented much of the exasperation, and of the subsequent complaints and recriminations to which it gave rise.

There are possible cases in the relations of nations, as of individuals, where necessity, which controls all other laws, may be pleaded; but it is neither easy nor safe to attempt to define the rights or limits properly assignable to such a plea. This must always be a subject of much delicacy, and should be considered by friendly nations with great candor and forbearance. The intentions of the parties must mainly be looked to; and can it for a moment be supposed that Great Britain would intentionally and wantonly provoke a great and powerful neighbor?

Her majesty's government earnestly desire that a reciprocal respect for the independent jurisdiction and authority of neighboring states may be considered among the first duties of all governments; and I have to repeat the assurance of regret they feel that the event of which I am treating should have disturbed the harmony they so anxiously wish to maintain with the American people and government.

Connected with these transactions there have also been circumstances of which, I believe, it is generally admitted that Great Britain has also had just ground to complain. Individuals have been made personally liable for acts done under the avowed authority of their government; and there are now many brave men exposed to personal consequences for no other cause than having served their country. That this is contrary to every principle of international law it is useless for me to insist. Indeed, it has been admitted by every authority of your

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government; but, owing to a conflict of laws, difficulties have intervened, much to the regret of those authorities, in giving practical effect to these principles; and for these difficulties some remedy has been by all desired. It is no business of mine to enter upon the consideration of them, nor have I sufficient information for the purpose; but I trust you will excuse my addressing to you the inquiry whether the government of the United States is now in a condition to secure, in effect and in practice, the principle which has never been denied in argument, that individuals acting under legitimate authority are not personally responsible for executing the orders of their government? That the power, when it exists, will be used on every fit occasion, I am well assured; and I am bound to admit that, looking through the voluminous correspondence concerning these transactions, there appears no indisposition with any of the authorities of the Federal government, under its several administrations, to do justice in this respect in as far as their means and powers would allow.

I trust, sir, I may now be permitted to hope that all feelings of resentment and ill-will resulting from these truly unfortunate events may be buried in oblivion, and that they may be succeeded by those of harmony and friendship, which it is certainly the interest, and, I also believe, the inclination of all to promote.

I beg, sir, you will be assured of my high and unfeigned consideration. ASHBURTON.

HON. DANIEL WEBSTER, &c., &c., &c.

Mr. Webster to Lord Ashburton.

DEPARTMENT OF STATE, *Washington, August* 6, 1842.

Your lordship's note of the 28th of July, in answer to mine of the 27th, respecting the case of the "Caroline," has been received and laid before the President.

The President sees with pleasure that your lordship fully admits those great principles of public law, applicable to cases of this kind, which this government has expressed; and that on your part, as on ours, respect for the inviolable character of the territory of independent states is the most essential foundation of civilization. And while it is admitted on both sides that there are exceptions to this rule, he is gratified to find that your lordship admits that such exceptions must come within the limitations stated and the terms used in a former communication from this department to the British plenipotentiary here. Undoubtedly it is just, that while it is admitted that exceptions growing out of the great law of self-defense do exist, those exceptions should be confined to cases in which the "necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation."

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Understanding these principles alike, the difference between the two governments is only whether the facts in the case of the "Caroline" make out a case of such necessity for the purpose of self-defense. Seeing that the transaction is not recent, having happened in the time of one of his predecessors; seeing that your lordship, in the name of your government, solemnly declares that no slight or disrespect was intended to the sovereign authority of the United States; seeing that it is acknowledged that, whether justifiable or not, there was yet a violation of the territory of the United States, and that you are instructed to say that your government consider that as a most serious occurrence; seeing, finally, that it is now admitted that an explanation and apology for this violation was due at the time, the President is content to receive these acknowledgments and assurances in the conciliatory spirit which marks your lordship's letter, and will make this subject, as a complaint of violation of territory, the topic of no further discussion between the two governments.

As to that part of your lordship's note which relates to other occurrences springing out of the case of the "Caroline," with which occurrences the name of Alexander M'Leod has become connected, I have to say that the government of the United States entirely adheres to the sentiments and opinions expressed in the communications from this department to Mr. Fox. This government has admitted that for an act committed by the command of his sovereign, *jure belli*, an individual can not be responsible in the ordinary courts of another state. It would regard it as a high indignity if a citizen of its own, acting under its authority and by its special command, in such cases were held to answer in a municipal tribunal, and to undergo punishment, as if the behest of his government were no defense or protection to him.

But your lordship is aware that in regular constitutional governments persons arrested on charges of high crimes can only be discharged by some judicial proceeding. It is so in England; it is so in the colonies and provinces of England. The forms of judicial proceeding differ in different countries, being more rapid in some and more dilatory in others; and it may be added, generally more dilatory, or, at least, more cautious in cases affecting life in governments of a strictly limited than in those of a more unlimited character. It was a subject of regret that the release of M'Leod was so long delayed. A state court, and that not of the highest jurisdiction, decided that, on summary application, embarrassed, as it would appear, by technical difficulties, he could not be released by that court. His discharge shortly afterward by a jury, to whom he preferred to submit his case, rendered unnecessary the further prosecu-

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tion of the legal question. It is for the Congress of the United States, whose attention has been called to the subject, to say what further provision ought to be made to expedite proceedings in such cases; and, in answer to your lordship's question toward the close of your note, I have to say that the government of the United States holds itself not only fully disposed, but fully competent to carry into practice every principle which it avows or acknowledges, and to fulfill every duty and obligation which it owes to foreign governments, their citizens, or subjects.

I have the honor to be, my lord, with great consideration, your obedient servant, DANIEL WEBSTER.

Lord ASHBURTON, &c., &c., &c.

THE CASE OF ALEXANDER M'LEOD.

Extract from the Message of the President of the United States, June 1, 1841.

A CORRESPONDENCE has taken place between the Secretary of State and the minister of her Britannic majesty accredited to this government, on the subject of Alexander M'Leod's indictment and imprisonment, copies of which are herewith communicated to Congress.

In addition to what appears from these papers, it may be proper to state that Alexander M'Leod has been heard by the Supreme Court of the State of New York on his motion to be discharged from imprisonment, and that the decision of that court has not as yet been pronounced.

Mr. Fox to Mr. Webster.

WASHINGTON, *March* 12, 1841.

The undersigned, her Britannic majesty's envoy extraordinary and minister plenipotentiary, is instructed by his government to make the following official communication to the government of the United States:

Her majesty's government have had under their consideration the correspondence which took place at Washington in December last between the United States Secretary of State, Mr. Forsyth, and the undersigned, comprising two official letters from the undersigned to Mr. Forsyth, dated the 13th and 29th of December, and two official letters from Mr. Forsyth to the undersigned, dated the 26th and 30th of the same month, upon the subject of the arrest and imprisonment of Mr. Alexander M'Leod, of Upper Canada, by the authorities of the

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State of New York, upon a pretended charge of arson and murder, as having been engaged in the capture and destruction of the steam-boat Caroline on the 29th of December, 1837.

The undersigned is directed, in the first place, to make known to the government of the United States that her majesty's government entirely approve of the course pursued by the undersigned in that correspondence, and of the language adopted by him in the official letters above mentioned.

And the undersigned is now instructed again to demand from the government of the United States, formally, in the name of the British government, the immediate release of Mr. Alexander M'Leod.

The grounds upon which the British government make this demand upon the government of the United States are these: that the transaction on account of which Mr. M'Leod has been arrested, and is to be put upon his trial, was a transaction of a public character, planned and executed by persons duly empowered by her majesty's colonial authorities to take any steps and to do any acts which might be necessary for the defense of her majesty's territories and for the protection of her majesty's subjects; and that, consequently, those subjects of her majesty who engaged in that transaction were performing an act of public duty for which they can not be made personally and individually answerable to the laws and tribunals of any foreign country.

The transaction in question may have been, as her majesty's government are of opinion that it was, a justifiable employment of force for the purpose of defending the British territory from the unprovoked attack of a band of British rebels and American pirates, who, having been permitted to arm and organize themselves within the territory of the United States, had actually invaded and occupied a portion of the territory of her majesty; or it may have been, as alleged by Mr. Forsyth, in his note to the undersigned of the 26th of December, "a most unjustifiable invasion, in time of peace, of the territory of the United States." But this is a question especially of a political and international kind, which can be discussed and settled only between the two governments, and which the courts of justice of the State of New York can not by possibility have any means of judging or any right of deciding.

It would be contrary to the universal practice of civilized nations to fix individual responsibility upon persons who, with the sanction or by the orders of the constituted authorities of a state, engaged in military or naval enterprises in their country's cause; and it is obvious that the introduction of such a principle would aggravate beyond measure the miseries, and would frightfully increase the demoralizing effects of war, by

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mixing up with national exasperation the ferocity of personal passions, and the cruelty and bitterness of individual revenge.

Her majesty's government can not believe that the government of the United States can really intend to set an example so fraught with evil to the community of nations, and the direct tendency of which must be to bring back into the practice of modern war atrocities which civilization and Christianity have long since banished.

Neither can her majesty's government admit for a moment the validity of the doctrine advanced by Mr. Forsyth, that the Federal government of the United States has no power to interfere in the matter in question, and that the decision thereof must rest solely and entirely with the State of New York.

With the particulars of the internal compact which may exist between the several states that compose the Union, foreign powers have nothing to do; the relations of foreign powers are with the aggregate Union; that Union is to them represented by the Federal government; and of that Union the Federal government is to them the only organ. Therefore, when a foreign power has redress to demand for a wrong done to it by any state of the Union, it is to the Federal government, and not to the separate state, that such power must look for redress for that wrong. And such foreign power can not admit the plea that the separate state is an independent body over which the Federal government has no control. It is obvious that such a doctrine, if admitted, would at once go to a dissolution of the Union as far as its relations with foreign powers are concerned; and that foreign powers, in such case, instead of accrediting diplomatic agents to the Federal government, would send such agents, not to that government, but to the government of each separate state, and would make their relations of peace and war with each state depend upon the result of their separate intercourse with such state, without reference to the relations they might have with the rest.

Her majesty's government apprehend that the above is not the conclusion at which the government of the United States intend to arrive; yet such is the conclusion to which the arguments that have been advanced by Mr. Forsyth necessarily lead.

But, be that as it may, her majesty's government formally demand, upon the grounds already stated, the immediate release of Mr. M'Leod; and her majesty's government entreat the President of the United States to take into his most deliberate consideration the serious nature of the consequences which must ensue from a rejection of this demand.

The United States government will perceive that, in demanding Mr. M'Leod's release, her majesty's government argue upon the assumption that he was one of the persons en-

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gaged in the capture of the steam-boat "Caroline;" but her majesty's government have the strongest reasons for being convinced that Mr. M'Leod was not, in fact, engaged in that transaction; and the undersigned is hereupon instructed to say that, although the circumstance itself makes no difference in the political and international question at issue, and although her majesty's government do not demand Mr. M'Leod's release upon the ground that he was not concerned in the capture of the "Caroline," but upon the ground that the capture of the "Caroline" was a transaction of a public character, for which the persons engaged in it can not incur private and personal responsibility; yet the government of the United States must not disguise from themselves that the fact that Mr. M'Leod was not engaged in the transaction must necessarily tend greatly to inflame that national resentment which any harm that shall be suffered by Mr. M'Leod at the hands of the authorities of the State of New York will infallibly excite throughout the whole of the British empire.

The undersigned, in addressing the present official communication, by order of his government, to Mr. Webster, Secretary of State of the United States, has the honor to offer him the assurance of his distinguished consideration.

H. S. Fox.

The Hon. DANIEL WEBSTER, *Secretary of State.*

Mr. Webster to Mr. Fox.

DEPARTMENT OF STATE, *Washington, April* 24, 1841.

The undersigned, Secretary of State of the United States, has the honor to inform Mr. Fox, envoy extraordinary and minister plenipotentiary of her Britannic majesty, that his note of the 12th of March was received and laid before the President.

Circumstances well known to Mr. Fox have necessarily delayed for some days the consideration of that note.

The undersigned has the honor now to say, that it has been fully considered, and that he has been directed by the President to address to Mr. Fox the following reply.

Mr. Fox informs the government of the United States that he is instructed to make known to it that the government of her majesty entirely approve the course pursued by him in his correspondence with Mr. Forsyth in December last, and the language adopted by him on that occasion; and that that government have instructed him "again to demand from the government of the United States, formally, in the name of the British government, the immediate release of Mr. Alexander M'Leod;" that "the grounds upon which the British government make this demand upon the government of the United States are these: that the transaction on account of which Mr.

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M'Leod has been arrested, and is to be put upon his trial, was a transaction of a public character, planned and executed by persons duly empowered by her majesty's colonial authorities to take any steps and to do any acts which might be necessary for the defense of her majesty's territories, and for the protection of her majesty's subjects; and that, consequently, those subjects of her majesty who engaged in that transaction were performing an act of public duty, for which they can not be made personally and individually answerable to the laws and tribunals of any foreign country."

The President is not certain that he understands precisely the meaning intended by her majesty's government to be conveyed by the foregoing instruction.

This doubt has occasioned with the President some hesitation; but he inclines to take it for granted that the main purpose of the instruction was, to cause it to be signified to the government of the United States that the attack on the steamboat "Caroline" was an act of public force, done by the British colonial authorities, and fully recognized by the queen's government at home; and that, consequently, no individual concerned in that transaction can, according to the just principle of the laws of nations, be held personally answerable in the ordinary courts of law as for a private offense; and that upon this avowal of her majesty's government, Alexander M'Leod, now imprisoned on an indictment for murder alleged to have been committed in that attack, ought to be released by such proceedings as are usual and are suitable to the case.

The President adopts the conclusion that nothing more than this could have been intended to be expressed, from the consideration that her majesty's government must be fully aware that in the United States, as in England, persons confined under judicial process can be released from that confinement only by judicial process. In neither country, as the undersigned supposes, can the arm of the executive power interfere, directly or forcibly, to release or deliver the prisoner. His discharge must be sought in a manner conformable to the principles of law, and the proceedings of courts of judicature. If an indictment, like that which has been found against Alexander M'Leod, and under circumstances like those which belong to his case, were pending against an individual in one of the courts of England, there is no doubt that the law-officer of the crown might enter a *nolle prosequi*, or that the prisoner might cause himself to be brought up on *habeas corpus*, and discharged if his ground of discharge should be adjudged sufficient, or that he might prove the same facts and insist on the same defense or exemption on his trial.

All these are legal modes of proceeding, well known to the

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laws and practice of both countries. But the undersigned does not suppose that if such a case were to arise in England, the power of the executive government could be exerted in any more direct manner. Even in the case of embassadors, and other public ministers whose right of exemption from arrest is personal, requiring no fact to be ascertained but the mere fact of diplomatic character, and to arrest whom is sometimes made a highly penal offense, if the arrest be actually made, it can only be discharged by application to the courts of law.

It is understood that Alexander M'Leod is holden as well on civil as on criminal process, for acts alleged to have been done by him in the attack on the "Caroline;" and his defense, or ground of acquittal, must be the same in both cases. And this strongly illustrates, as the undersigned conceives, the propriety of the foregoing observations; since it is quite clear that the executive government can not interfere to arrest a civil suit between private parties in any stage of its progress; but that such suit must go on to its regular judicial termination. If, therefore, any course different from such as have been now mentioned was in contemplation of her majesty's government, something would seem to have been expected from the government of the United States as little conformable to the laws and usages of the English government as to those of the United States, and to which this government can not accede.

The government of the United States, therefore, acting upon the presumption, which it readily adopted, that nothing extraordinary or unusual was expected or requested of it, decided, on the reception of Mr. Fox's note, to take such measures as the occasion and its own duty appeared to require.

In his note to Mr. Fox of the 26th of December last, Mr. Forsyth, the Secretary of State of the United States, observes, that "if the destruction of the 'Caroline' was a public act of persons in her majesty's service, obeying the order of their superior authorities, this fact has not been before communicated to the government of the United States by a person authorized to make the admission; and it will be for the court which has taken cognizance of the offense with which Mr. M'Leod is charged to decide upon its validity when legally established before it." And adds, "the President deems this to be a proper occasion to remind the government of her Britannic majesty, that the case of the 'Caroline' has been long since brought to the attention of her majesty's principal Secretary of State for Foreign Affairs, who up to this day has not communicated its decision thereupon. It is hoped that the government of her majesty will perceive the importance of no longer leaving the government of the United States uninformed of its views and intentions upon a subject which has naturally produced

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much exasperation, and which has led to such grave consequences."

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The communication of the fact that the destruction of the "Caroline" was an act of public force by the British authorities, being formally made to the government of the United States by Mr. Fox's note, the case assumes a decided aspect.

The government of the United States entertains no doubt that, after this avowal of the transaction as a public transaction, authorized and undertaken by the British authorities, individuals concerned in it ought not, by the principles of public law and the general usage of civilized states, to be holden personally responsible in the ordinary tribunals of law for their participation in it. And the President presumes that it can hardly be necessary to say that the American people, not distrustful of their ability to redress public wrongs by public means, can not desire the punishment of individuals when the act complained of is declared to have been an act of the government itself.

Soon after the date of Mr. Fox's note, an instruction was given to the Attorney-general of the United States from this department, by direction of the President, which fully sets forth the opinions of this government on the subject of M'Leod's imprisonment, a copy of which instruction the undersigned has the honor herewith to inclose.

The indictment against M'Leod is pending in a state court, but his rights, whatever they may be, are no less safe, it is to be presumed, than if he were holden to answer in one of the courts of this government.

He demands immunity from personal responsibility by virtue of the law of nations, and that law in civilized states is to be respected in all courts. None is either so high or so low as to escape from its authority in cases to which its rules and principles apply.

This department has been regularly informed by his Excellency the Governor of the State of New York, that the chief justice of that state was assigned to preside at the hearing and trial of M'Leod's case, but that, owing to some error or mistake in the process of summoning the jury, the hearing was necessarily deferred. The President regrets this occurrence, as he has a desire for a speedy disposition of the subject. The council for M'Leod have requested authentic evidence of the avowal by the British government of the attack on and destruction of the "Caroline," as acts done under its authority, and such evidence will be furnished to them by this department.

It is understood that the indictment has been removed into the Supreme Court of the State by the proper proceeding for that purpose, and that it is now competent for M'Leod, by the

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ordinary process of *habeas corpus*, to bring his case for hearing before that tribunal.

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The undersigned hardly needs to assure Mr. Fox, that a tribunal so eminently distinguished for ability and learning as the Supreme Court of the State of New York, may be safely relied upon for the just and impartial administration of the law in this as well as in other cases; and the undersigned repeats the expression of the desire of this government that no delay may be suffered to take place in these proceedings which can be avoided. Of this desire, Mr. Fox will see evidence in the instructions above referred to.

The undersigned has now to signify to Mr. Fox that the government of the United States has not changed the opinion which it has heretofore expressed to her majesty's government of the character of the act of destroying the "Caroline."

It does not think that that transaction can be justified by any reasonable application or construction of the right of self-defense under the laws of nations. It is admitted that a just right of self-defense attaches always to nations as well as to individuals, and is equally necessary for the preservation of both. But the extent of this right is a question to be judged of by the circumstances of each particular case; and when its alleged exercise has led to the commission of hostile acts within the territory of a power at peace, nothing less than a clear and absolute necessity can afford ground of justification. Not having up to this time been made acquainted with the views and reasons at length which have led her majesty's government to think the destruction of the "Caroline" justifiable as an act of self-defense, the undersigned, earnestly renewing the remonstrance of this government against the transaction, abstains for the present from any extended discussion of the question. But it is deemed proper, nevertheless, not to omit to take some notice of the general grounds of justification stated by her majesty's government in their instruction to Mr. Fox.

Her majesty's government have instructed Mr. Fox to say, that they are of opinion that the transaction which terminated in the destruction of the "Caroline" was a justifiable employment of force for the purpose of defending the British territory from the unprovoked attack of a band of British rebels and American pirates, who, having been "permitted" to arm and organize themselves within the territory of the United States, had actually invaded a portion of the territory of her majesty.

The President can not suppose that her majesty's government, by the use of these terms, meant to be understood as intimating that those acts, violating the laws of the United States and disturbing the peace of the British territories, were done under any degree of countenance from this government, or

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were regarded by it with indifference, or that, under the circumstances of the case, they could have been prevented by the ordinary course of proceeding. Although he regrets that, by using the term "permitted," a possible inference of that kind might be raised; yet such an inference, the President is willing to believe, would be quite unjust to the intentions of the British government.

That on a line of frontier such as separates the United States from her Britannic majesty's North American provinces—a line long enough to divide the whole of Europe into halves—irregularities, violences, and conflicts should sometimes occur, equally against the will of both governments, is certainly easily to be supposed. This may be more possible, perhaps, in regard to the United States, without any reproach to their government, since their institutions entirely discourage the keeping up of large standing armies in time of peace, and their situation happily exempts them from the necessity of maintaining such expensive and dangerous establishments. All that can be expected from either government, in these cases, is good faith, a sincere desire to preserve peace and do justice, the use of all proper means of prevention, and that, if offenses can not, nevertheless, be always prevented, the offenders shall still be justly punished. In all these respects, this government acknowledges no delinquency in the performance of its duties.

Her majesty's government are pleased, also, to speak of those American citizens who took part with persons in Canada, engaged in an insurrection against the British government, as "American pirates." The undersigned does not admit the propriety or justice of this designation. If citizens of the United States fitted out, or were engaged in fitting out, a military expedition from the United States, intended to act against the British government in Canada, they were clearly violating the laws of their own country, and exposing themselves to the just consequences which might be inflicted on them if taken within the British dominions. But, notwithstanding this, they were certainly not pirates, nor does the undersigned think that it can advance the purpose of fair and friendly discussion, or hasten the accommodation of national difficulties, so to denominate them. Their offense, whatever it was, had no analogy to cases of piracy. Supposing all that is alleged against them to be true, they were taking a part in what they regarded as a civil war, and they were taking a part on the side of the rebels. Surely England herself has not regarded persons thus engaged as deserving the appellation which her majesty's government bestows on these citizens of the United States.

It is quite notorious that, for the greater part of the last two centuries, subjects of the British crown have been permit-

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ted to engage in foreign wars, both national and civil, and in the latter in every stage of their progress; and yet it has not been imagined that England has at any time allowed her subjects to turn pirates. Indeed, in our own times, not only have individual subjects of that crown gone abroad to engage in civil wars, but we have seen whole regiments openly recruited, embodied, armed, and disciplined in England, with the avowed purpose of aiding a rebellion against a nation with which England was at peace; although it is true that, subsequently, an act of Parliament was passed to prevent transactions so nearly approaching to public war, without license from the crown.

It may be said that there is a difference between the case of a civil war arising from a disputed succession, or a protracted revolt of a colony against the mother country, and the case of a fresh outbreak, or commencement of a rebellion. The undersigned does not deny that such distinction may, for certain purposes, be deemed well founded. He admits that a government, called upon to consider its own rights, interests, and duties, when civil wars break out in other countries, may decide on all the circumstances of the particular case upon its own existing stipulations, on probable results, on what its own security requires, and on many other considerations. It may be already bound to assist one party, or it may become bound, if it so chooses, to assist the other, and to meet the consequences of such assistance.

But whether the revolt be recent or long continued, they who join those concerned in it, whatever may be their offense against their own country, or however they may be treated, if taken with arms in their hands in the territory of the government against which the standard of revolt is raised, can not be denominated pirates without departing from all ordinary use of language in the definition of offenses. A cause which has so foul an origin as piracy can not, in its progress or by its success, obtain a claim to any degree of respectability or tolerance among nations; and civil wars, therefore, are not understood to have such a commencement.

It is well known to Mr. Fox that authorities of the highest eminence in England, living and dead, have maintained that the general law of nations does not forbid the citizens or subjects of one government from taking part in the civil commotions of another. There is some reason, indeed, to think that such may be the opinion of her majesty's government at the present moment.

The undersigned has made these remarks from the conviction that it is important to regard established distinctions, and to view the acts and offenses of individuals in the exactly

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proper light. But it is not to be inferred that there is, on the part of this government, any purpose of extenuating in the slightest degree the crimes of those persons, citizens of the United States, who have joined in military expeditions against the British government in Canada. On the contrary, the President directs the undersigned to say that it is his fixed resolution that all such disturbers of the national peace, and violators of the laws of their country, shall be brought to exemplary punishment. Nor will the fact that they are instigated and led on to these excesses by British subjects, refugees from the provinces, be deemed any excuse or palliation; although it is well worthy of being remembered that the prime movers of these disturbances on the borders are subjects of the queen, who come within the territories of the United States, seeking to enlist the sympathies of their citizens by all the motives which they are able to address to them on account of grievances, real or imaginary. There is no reason to believe that the design of any hostile movement from the United States against Canada has commenced with citizens of the United States. The true origin of such purposes and such enterprises is on the other side of the line. But the President's resolution to prevent these transgressions of the law is not, on that account, the less strong. It is taken, not only in conformity to his duty under the provisions of existing laws, but in full consonance with the established principles and practice of this government.

The government of the United States has not, from the first, fallen into the doubts, elsewhere entertained, of the true extent of the duties of neutrality. It has held that, however it may have been in less enlightened ages, the just interpretation of the modern law of nations is, that neutral states are bound to be strictly neutral; and that it is a manifest and gross impropriety for individuals to engage in the civil conflicts of other states, and thus to be at war while their government is at peace. War and peace are high national relations, which can properly be established or changed only by nations themselves.

The United States have thought, also, that the salutary doctrine of non-intervention by one nation with the affairs of others is liable to be essentially impaired if, while government refrains from interference, interference is still allowed to its subjects, individually or in masses. It may happen, indeed, that persons choose to leave their country, emigrate to other regions, and settle themselves on uncultivated lands, in territories belonging to other states. This can not be prevented by governments which allow the emigration of their subjects and citizens; and such persons, having voluntarily abandoned their own country, have no longer claim to its protection, nor is it

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longer responsible for their acts. Such cases, therefore, if they occur, show no abandonment of the duty of neutrality.

The government of the United States has not considered it as sufficient to confine the duties of neutrality and non-interference to the case of governments whose territories lie adjacent to each other. The application of the principle may be more necessary in such cases, but the principle itself they regard as being the same, if those territories be divided by half the globe. The rule is founded in the impropriety and danger of allowing individuals to make war on their own authority, or, by mingling themselves in the belligerent operations of other nations, to run the hazard of counteracting the policy, or embroiling the relations, of their own government. And the United States have been the first among civilized states to enforce the observance of this just rule of neutrality and peace, by special and adequate legal enactments. In the infancy of this government, on the breaking out of the European wars which had their origin in the French Revolution, Congress passed laws, with severe penalties, for preventing the citizens of the United States from taking part in those hostilities.

By these laws, it prescribed to the citizens of the United States what it understood to be their duty, as neutrals, by the law of nations, and the duty, also, which they owed to the interest and honor of their own country.

At a subsequent period, when the American colonies of a European power took up arms against their sovereign, Congress, not diverted from the established system of the government by any temporary considerations, not swerved from its sense of justice and of duty by any sympathies which it might naturally feel for one of the parties, did not hesitate, also, to pass acts applicable to the case of colonial insurrection and civil war. And these provisions of law have been continued, revised, amended, and are in full force at the present moment. Nor have they been a dead letter, as it is well known that exemplary punishments have been inflicted on those who have transgressed them. It is known, indeed, that heavy penalties have fallen on individuals (citizens of the United States) engaged in this very disturbance in Canada with which the destruction of the Caroline was connected. And it is in Mr. Fox's knowledge, also, that the act of Congress of the 10th of March, 1838, was passed for the precise purpose of more effectually restraining military enterprises from the United States into the British provinces, by authorizing the use of the most sure and decisive preventive means. The undersigned may add, that it stands on the admission of very high British authority, that during the recent Canadian troubles, although bodies of adventurers appeared on the border, making it necessary for the people of

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Canada to keep themselves in a state prepared for self-defense, yet that these adventurers were acting by no means in accordance with the feeling of the great mass of the American people, or of the government of the United States.

This government, therefore, not only holds itself above reproach in every thing respecting the preservation of neutrality, the observance of the principle of non-intervention, and the strictest conformity, in these respects, to the rules of international law, but it doubts not that the world will do it the justice to acknowledge that it has set an example not unfit to be followed by others; and that by its steady legislation on this most important subject it has done something to promote peace and good neighborhood among nations, and to advance the civilization of mankind.

The undersigned trusts that when her Britannic majesty's government shall present the grounds, at length, on which they justify the local authorities of Canada in attacking and destroying the "Caroline," they will consider that the laws of the United States are such as the undersigned has now represented them, and that the government of the United States has always manifested a sincere disposition to see those laws effectually and impartially administered. If there have been cases in which individuals, justly obnoxious to punishment, have escaped, this is no more than happens in regard to other laws.

Under these circumstances, and under those immediately connected with the transaction itself, it will be for her majesty's government to show upon what state of facts and what rules of national law the destruction of the "Caroline" is to be defended. It will be for that government to show a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation. It will be for it to show, also, that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable or excessive; since the act, justified by the necessity of self-defense, must be limited by that necessity, and kept clearly within it. It must be shown that admonition or remonstrance to the persons on board the "Caroline" was impracticable, or would have been unavailing. It must be shown that daylight could not be waited for; that there could be no attempt at discrimination between the innocent and the guilty; that it would not have been enough to seize and detain the vessel; but that there was a necessity, present and inevitable, for attacking her in the darkness of the night, while moored to the shore, and while unarmed men were asleep on board, killing some and wounding others, and then drawing her into the current above the cataract, setting her on fire, and, careless to know whether

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there might not be in her the innocent with the guilty, or the living with the dead, committing her to a fate which fills the imagination with horror. A necessity for all this the government of the United States can not believe to have existed.

All will see that, if such things be allowed to occur, they must lead to bloody and exasperated war. And when an individual comes into the United States from Canada, and to the very place on which this drama was performed, and there chooses to make public and vain-glorious boast of the part he acted in it, it is hardly wonderful that great excitement should be created, and some degree of commotion arise.

This republic does not wish to disturb the tranquillity of the world. Its object is peace, its policy peace. It seeks no aggrandizement by foreign conquest, because it knows that no foreign acquisitions could augment its power and importance so rapidly as they are already advancing by its own natural growth, under the propitious circumstances of its situation. But it can not admit that its government has not both the will and the power to preserve its own neutrality, and to enforce the observance of its own laws upon its own citizens. It is jealous of its rights, and among others, and most especially, of the right of the absolute immunity of its territory against aggression from abroad; and these rights it is the duty and determination of this government fully and at all times to maintain, while it will at the same time as scrupulously refrain from infringing on the rights of others.

The President instructs the undersigned to say, in conclusion, that he confidently trusts that this and all other questions of difference between the two governments will be treated by both in the full exercise of such a spirit of candor, justice, and mutual respect as shall give assurance of the long continuance of peace between the two countries.

The undersigned avails himself of this opportunity to assure Mr. Fox of his high consideration. DANIEL WEBSTER.

HENRY S. FOX, ESQ., *Envoy Extraordinary and Minister Plenipotentiary.*

[INCLOSURE.]

DEPARTMENT OF STATE, *Washington, March* 15, 1841.

SIR,—Alexander M'Leod, a Canadian subject of her Britannic majesty, is now imprisoned at Lockport, in the State of New York, under an indictment for murder alleged to have been committed by him in the attack on, and the destruction of, the steam-boat Caroline, at Schlosser, in that state, on the night of the 29th of December, 1837; and his trial is expected to take place at Lockport on the 22d instant.

You are apprised of the correspondence which took place between Mr. Forsyth, late Secretary of State, and Mr. Fox, her

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Britannic majesty's minister here, on this subject, in December last.

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In his note to Mr. Fox, of the 26th of that month, Mr. Forsyth says: "If the destruction of the Caroline was a public act of persons in her majesty's service obeying the order of their superior authorities, this fact has not been before communicated to the government of the United States by a person authorized to make the admission; and it will be for the court which has taken cognizance of the offense with which Mr. M'Leod is charged to decide upon its validity when legally established before it.

"The President deems this to be a proper occasion to remind the government of her Britannic majesty that the case of the Caroline has been long since brought to the attention of her majesty's principal Secretary of State for Foreign Affairs, who, up to this day, has not communicated its decision thereupon. It is hoped that the government of her majesty will perceive the importance of no longer leaving the government of the United States uninformed of its views and intentions upon a subject which has naturally produced much exasperation, and which has led to such grave consequences."

I have now to inform you that Mr. Fox has addressed a note to this department, under date of the 12th instant, in which, by the immediate instruction and direction of his government, he demands, formally and officially, M'Leod's immediate release, on the ground that this transaction, on account of which he has been arrested and is to be put upon his trial, was of a public character, planned and executed by persons duly empowered by her majesty's colonial authorities to take any steps, and to do any acts, which might be necessary for the defense of her majesty's territories, and for the protection of her majesty's subjects; and that, consequently, those subjects of her majesty who engaged in that transaction were performing an act of public duty, for which they can not be made, personally and individually, answerable to the laws and tribunals of any foreign country; and that her majesty's government has further directed Mr. Fox to make known to the government of the United States that her majesty's government entirely approved of the course pursued by Mr. Fox, and the language adopted by him in the correspondence above mentioned.

There is, therefore, now an authentic declaration on the part of the British government that the attack on the Caroline was an act of public force, done by military men under the orders of their superiors, and is recognized as such by the queen's government. The importance of this declaration is not to be doubted, and the President is of opinion that it calls upon him for the performance of a high duty. That an individual, form-

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ing part of a public force, and acting under the authority of his government, is not to be held answerable, as a private trespasser or malefactor, is a principle of public law sanctioned by the usages of all civilized nations, and which the government of the United States has no inclination to dispute. This has no connection whatever with the question, whether, in this case, the attack on the Caroline was, as the British government think it, a justifiable employment of force for the purpose of defending the British territory from unprovoked attack, or whether it was a most unjustifiable invasion, in time of peace, of the territory of the United States, as this government has regarded it. The two questions are essentially distinct and different; and, while acknowledging that an individual may claim immunity from the consequences of acts done by him, by showing that he acted under national authority, this government is not to be understood as changing the opinions which it has heretofore expressed in regard to the real nature of the transaction which resulted in the destruction of the Caroline. That subject it is not necessary for any purpose connected with this communication now to discuss. The views of this government in relation to it are known to that of England; and we are expecting the answer of that government to the communication which has been made to it.

All that is intended to be said at present is, that since the attack on the Caroline is avowed as a national act, which may justify reprisals, or even general war, if the government of the United States, in the judgment which it shall form of the transaction and of its own duty, should see fit so to decide, yet that it raises a question entirely public and political; a question between independent nations, and that individuals concerned in it can not be arrested and tried before the ordinary tribunals, as for the violation of municipal law. If the attack on the Caroline was unjustifiable, as this government has asserted, the law which has been violated is the law of nations; and the redress which is to be sought is the redress authorized, in such cases, by the provisions of that code.

You are well aware that the President has no power to arrest the proceeding in the civil and criminal courts of the State of New York. 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.

Whether, in this case, the Governor of New York have that power, or, if he have, whether he would feel it his duty to exercise it, are points upon which we are not informed.

It is understood that M'Leod is holden also on civil process, sued out against him by the owner of the Caroline. We sup-

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pose it very clear that the executive of the state can not interfere with such process; and, indeed, if such process were pending in the courts of the United States, the President could not arrest it. In such, and many analogous cases, the party prosecuted or sued must avail himself of his exemption or defense by judicial procedings, either in the court into which he is called, or in some other court. But whether the process be criminal or civil, the fact of having acted under public authority, and in obedience to the orders of lawful superiors, must be regarded as a valid defense; otherwise individuals would be holden responsible for injuries resulting from the acts of government, and even from the operations of public war.

You will be furnished with a copy of this instruction for the use of the Executive of New York and the attorney-general of that state. You will carry with you, also, authentic evidence of the recognition by the British government of the destruction of the Caroline as an act of public force, done by national authority.

The President is impressed with the propriety of transferring the trial from the scene of the principal excitement to some other and distant county. You will take care that this be suggested to the prisoner's counsel. The President is gratified to learn that the Governor of New York has already directed that the trial take place before the chief-justice of the state.

Having consulted with the governor, you will proceed to Lockport, or wherever else the trial may be holden, and furnish the prisoner's counsel with the evidence of which you will be in possession material to his defense. You will see that he have skillful and eminent counsel, if such be not already retained; and, although you are not desired to act as counsel yourself, you will cause it to be signified to him, and to the gentleman who may conduct his defense, that it is the wish of this government that, in case his defense be overruled by the court in which he shall be tried, proper steps be taken immediately for removing the cause, by writ of error, to the Supreme Court of the United States.

The President hopes that you will use such dispatch as to make your arrival at the place of trial sure before the trial comes on; and he trusts you will keep him informed of whatever occurs by means of a correspondence through this department.

I have the honor to be, Mr. Attorney-general, your obedient servant,

DANIEL WEBSTER.

Hon. JOHN J. CRITTENDEN, *Attorney-general of the United States.*

It is known that M'Leod was brought before the Supreme

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Court of the State of New York by writs of *habeas corpus*, and his discharge from imprisonment insisted on, upon the ground that, if he had had any concern in the destruction of the Caroline, he had acted therein as a soldier, under the order of his superiors, in a military expedition planned and authorized by the British colonial government of Canada, and afterward avowed and sanctioned by the queen's government in England.

The court on that occasion, however, took a different view of the law from that which had been expressed by Mr. Webster in his letters to Mr. Fox and Mr. Crittenden. The case is reported in Wendell's Reports, vol. xxv., page 483.

This decision does not appear to have given satisfaction either to the profession or to the public men of the country. It was ably reviewed in a pamphlet by the late D. B. Talmadge, formerly one of the judges of the Superior Court of the city of New York. That review will also be found in Wendell's Reports, vol. xxvi., in the Appendix.

Chancellor Kent, Chief-justice Spencer, and other eminent jurists have expressed their approbation of Mr. Talmadge's "Review," and their entire concurrence in his judgment upon the legal question.

It was justly apprehended, that if the tribunals of individual states possessed the power of acting on questions of this kind, without revision or control, dangerous consequences might arise to the peace of the country. How could the government of the United States be responsible for the fulfillment of its obligations to other governments, their citizens and subjects, if, in cases of so much importance and delicacy as M'Leod's, a state court might take final judgment into its own hands? An ultimate reference in some way to the judicial authorities of the United States, of questions connected with the foreign relations of the country, and which may involve its peace, would seem to be quite essential. Under the influence of such a conviction, and with this decision of the Supreme Court of New York before it, Congress, on the 29th of August, 1842, passed the following act:

"*An Act to provide further remedial Justice in the Courts of the United States.*

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That either of the justices of the Supreme Court of the United States, or a judge of any District Court of the United States, in which a prisoner is confined, in addition to the authority already conferred by law, shall have power to grant writs of habeas corpus in all cases of any prisoner or prisoners in jail or confinement, where he, she, or they, being subjects or citizens of a

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foreign state, and domiciled therein, shall be committed or confined, or in custody, under or by any authority or law, or process founded thereon, of the United States, or of any one of them, for or on account of any act done or omitted under any alleged right, title, authority, privilege, protection, or exemption, set up or claimed under the commission, or order, or sanction of any foreign state or sovereignty, the validity or effect whereof depend upon the law of nations, or under color thereof. And upon the return of the said writ, and due proof of the service of notice of the said proceeding to the attorney general, or other officer prosecuting the pleas of the state, under whose authority the petitioner has been arrested, committed, or is held in custody, to be prescribed by the said justice or judge at the time of granting said writ, the said justice or judge shall proceed to hear the said cause; and if, upon hearing the same, it shall appear that the prisoner or prisoners is or are entitled to be discharged from such confinement, commitment, custody, or arrest, for or by reason of such alleged right, title, authority, privileges, protection, or exemption, so set up and claimed, and the law of nations applicable thereto, and that the same exists in fact, and has been duly proved to the said justice or judge, then it shall be the duty of the said justice or judge forthwith to discharge such prisoner or prisoners accordingly. And if it shall appear to the said justice or judge that such judgment of discharge ought not to be rendered, then the said prisoner or prisoners shall be forthwith remanded: *Provided always*, That from any decision of such justice or judge an appeal may be taken to the Circuit Court of the United States for the district in which the said cause is heard; and from the judgment of the said Circuit Court to the Supreme Court of the United States, on such terms and under such regulations and orders as well for the custody and appearance of the prisoner or prisoners as for sending up to the appellate tribunal a transcript of the petition, writ of habeas corpus returned thereto, and other proceedings, as the judge hearing the said cause may prescribe; and pending such proceedings or appeal, and until final judgment be rendered therein, and after final judgment of discharge in the same, any proceeding against said prisoner or prisoners, in any state court, or by or under the authority of any state, for any matter or thing so heard and determined, or in process of being heard and determined, under and by virtue of such writ of habeas corpus, shall be deemed null and void."

The authorities of public law would appear to be under no doubt of M'Leod's right to be exempted from personal responsibility for any act he might have committed as a member of a military force acting under the authority of its government.

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The following citations may be sufficient to establish this, and to maintain the principles stated in Mr. Webster's letter to the attorney general.

"On all occasions susceptible of doubt, the whole nation, the individuals, and especially the military, are to submit their judgment to those who hold the reins of government—to the sovereign. This they are bound to do, by the essential principles of political society and of government. What would be the consequence if, at every step of the sovereign, the subjects were at liberty to weigh the justice of his reasons, and refuse to march to a war which might to them appear unjust? It often happens that prudence will not permit a sovereign to disclose all his reasons. It is the duty of subjects to suppose them just and wise, until clear and absolute evidence tells them the contrary. When, therefore, under the impression of such an idea, they have lent their assistance in a war which is afterward found to be unjust, the sovereign alone is guilty; he alone is bound to repair the injuries. The subjects, and in particular the military, are innocent; they have acted only from a necessary obedience."—*Vattel*, b. iii., ch. ii., § 187.

"Indeed, in solemn war, the individual members of a nation which has declared war are not punishable by the adverse nation for what they do, because the guilt of their actions is chargeable upon the nation which directs and authorizes them to act. But even this effect may be produced, though not in the respect of all the members of the nation, yet in respect of some of them, without a declaration of war. For, in the less solemn kinds of war, what the members do, who act under the particular direction and authority of their nation, is by the law of nations no personal crime in them; they can not, therefore, be punished, consistently with this law, for any act in which it considers them only as the instruments, and the nation as the agent."—*Rutherford*, b. ii., ch. ix., § 18.

"A mere presumption of the will of the sovereign would not be sufficient to excuse a governor or any other officer who should undertake a war, except in case of necessity, without either a general or particular order. For it is not sufficient to know what part the sovereign would probably act if he were consulted in such a particular posture of affairs; but it should rather be considered, in general, what it is probable a prince would desire should be done, without consulting him, when the matter will bear no delay and the affair is dubious. Now, certainly, sovereigns will never consent that their ministers should, whenever they think proper, undertake without their order a thing of such importance as an offensive war, which is the proper subject of the present inquiry.

"In these circumstances, whatever part the sovereign would

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have thought proper to act if he had been consulted, and whatever success the war undertaken without his order may have had, it is left to the sovereign whether he will ratify or condemn the act of his ministers. If he ratify it, this approbation renders the war solemn, by reflecting back, as it were, an authority upon it; so that it obliges the whole commonwealth." —*Burlimaqui*, Part iv., ch. iii., § 18 and 19.

RIGHT OF SEARCH.

Mr. Everett to Mr. Webster.—[EXTRACTS.]

LEGATION OF THE UNITED STATES, *London, December* 28, 1841.

While at Paris, I received a letter from Lord Aberdeen of the 2d December, with sundry accompanying documents, relative to an extraordinary outrage on the person of Captain Endicott, of the American bark Lintin, in Macao Roads. On my return to London, I acknowledged the receipt of this communication, and herewith transmit you a copy of Lord Aberdeen's note and my reply, and of all the documents in the case. I should have been pleased to confine my answer to a simple expression of satisfaction at the promptness of the action of her majesty's government; but I deemed it but just to Captain Endicott to make an observation in answer to that part of Lord Aberdeen's note in which the burden of the provocation was assumed to be on Captain Endicott's side.

I received on the 23d instant a note from Lord Aberdeen on the African seizures, in reply to one addressed to him by Mr. Stevenson in the last hours of his residence in London, and which, as it appears, did not reach Lord Aberdeen's hands till Mr. Stevenson had left London. As some time must elapse before I could give a detailed answer to this communication, I thought it best at once to acknowledge its receipt, to express my satisfaction at its dispassionate tone, and to announce the purpose of replying to it at some future period. The President, I think, will be struck with the marked change in the tone of the present ministry, as manifested in this note and a former one addressed by Lord Aberdeen to Mr. Stevenson, contrasted with the last communication from Lord Palmerston on the same subject. The difference is particularly apparent in Lord Aberdeen's letter to me of the 20th inst. Not only is the claim of Great Britain, relative to the right of detaining suspicious vessels, stated in a far less exceptionable manner than it had been done by Lord Palmerston, but Lord Aberdeen expressly declines being responsible for the language of his predecessor.

You will observe that Lord Aberdeen disclaims, in a more distinct manner than it has ever been done, all right to search,

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detain, or in any manner interfere with American vessels, whether engaged in the slave trade or not; that he limits the pretensions of this government to boarding vessels strongly suspected of being those of other nations unwarrantably assuming the American flag; and promises, when this right has been abused to the injury of American vessels, that full and ample reparation shall be made. As the United States have never claimed that their flag should furnish protection to any vessels but their own, and as very strict injunctions have been forwarded to the cruisers on the coast of Africa not to interfere with American vessels, I am inclined to think that cases of interruption will become much less frequent. And if this government should redeem in good faith Lord Aberdeen's promise of reparation where injury has been done, I am disposed to hope that this subject of irritation will in a great measure cease to exist. I shall not engage in the discussion of the general principles as now avowed and explained by this government till I hear from you on the subject, and know what the President's views are; but I shall confine myself chiefly to urging the claim for redress in the cases of the Tigris, Seamew, Jones, and William and Francis, which were the last submitted by my predecessor, and on which no answer has been received from this government.

Among the reasons for supposing that fewer causes of complaint will hereafter arise, is the circumstance that the seizures of last year took place under the agreement of Commodore Tucker, the British commander on the African station, and the officer in command of the American cruiser. I find nothing on the files of the legation showing what order, if any, has been taken by our government on the subject of this arrangement. It is taken for granted by this government that this agreement is disavowed by that of the United States; and since February last positive orders have been given to the British cruisers in the African seas not to interfere with American ships, even though known to be engaged in the slave trade. I shall await with much anxiety the instructions of the President on this important subject.

[INCLOSURE.]

FOREIGN OFFICE, *December* 2, 1841.

SIR,—I have the honor to inform you that the Lords Commissioners of the Admiralty have communicated to me a dispatch and its inclosures, which their lordships have recently received from Commodore Sir J. Gordon Bremer, dated Hong Kong, the 9th of August last, relative to the improper conduct of Mr. Bean, master and commanding officer of her majesty's ship "Herald," toward the master of the American barque

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"Lintin," while at anchor in the Taypa Roads, near Macao. It appears from these papers (copies of which I have the honor to inclose, for the information of your government), that some altercation having taken place respecting the mooring of their respective vessels, the master of the "*Herald*," in the afternoon of the 24th of July, manned and armed a boat, and sent the mate of the "*Herald*" alongside the "*Lintin*" with orders to require the master of that vessel to go on board the "*Herald*;" and that, upon his refusing to go, he was forcibly conveyed thither, and there detained for some hours.

Although it would appear, from the details given in the inclosed papers, that the master of the "*Lintin*" brought this indignity upon himself by his own irritating and contemptuous conduct toward the commander of the "*Herald*," yet her majesty's government consider such provocation as no justification for the proceeding adopted by Mr. Bean, and the Lords Commissioners of the Admiralty have accordingly signified to that officer their high displeasure at his indefensible conduct upon this occasion, and have ordered him to be dismissed from her majesty's service and sent home. I have, &c.,

ABERDEEN.

EDWARD EVERETT, Esq.

Lord Aberdeen to Mr. Everett.—[INCLOSURE.]

FOREIGN OFFICE, *December* 20, 1841.

The undersigned, her majesty's principal Secretary of State for Foreign Affairs, has the honor of addressing to Mr. Everett, envoy extraordinary and minister plenipotentiary of the United States, the observations which he feels called upon to make in answer to the note of Mr. Stevenson, dated on the 21st of October.

As that communication only reached the hands of the undersigned on the day after the departure of Mr. Stevenson from London, on his return to America, and as there has since been no minister or chargé d'affaires from the United States resident in this country, the undersigned has looked with some anxiety for the arrival of Mr. Everett, in order that he might be enabled to renew his diplomatic intercourse with an accredited representative of the republic. Had the undersigned entertained no other purpose than to controvert the arguments of Mr. Stevenson, or to fortify his own, in treating of the matter which has formed the subject of their correspondence, he would have experienced little impatience; but as it is his desire to clear up doubt, and to remove misapprehension, he feels that he can not too early avail himself of the presence of Mr. Everett at his post, to bring to his knowledge the true state of the question at issue.

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The undersigned agrees with Mr. Stevenson in the importance of arriving at a clear understanding of the matter really in dispute. This ought to be the first object in the differences of states, as well as of individuals; and, happily, it is often the first step to the reconciliation of the parties. In the present case this understanding is doubly essential, because a continuance of mistake and error may be productive of the most serious consequences.

Mr. Stevenson persists in contending that the British government assert a right which is equivalent to the claim of searching American vessels in time of peace. In proof of this, Mr. Stevenson refers to a passage in a former note of Viscount Palmerston, addressed to himself, against which he strongly protests, and the doctrine contained in which he says that the undersigned is understood to affirm.

Now, it is not the intention of the undersigned to inquire into the precise import and force of the expressions of Viscount Palmerston. These might have been easily explained to Mr. Stevenson by their author at the time they were written; but the undersigned must request that his doctrines upon this subject, and those of the government of which he is the organ, may be judged of exclusively from his own declarations.

The undersigned again renounces, as he has already done in the most explicit terms, any right on the part of the British government to search American vessels in time of peace. The right of search, except when specially conceded by treaty, is a purely belligerent right, and can have no existence on the high seas during peace. The undersigned apprehends, however, that the right of search is not confined to the verification of the nationality of the vessel, but also extends to the object of the voyage and the nature of the cargo. The sole purpose of the British cruisers is, to ascertain whether the vessels they meet with are really American or not. The right asserted has, in truth, no resemblance to the right of search, either in principle or in practice. It is simply a right to satisfy the party, who has a legitimate interest in knowing the truth, that the vessel actually is what her colors announce. This right we concede as freely as we exercise. The British cruisers are not instructed to detain American vessels, under any circumstances whatever; on the contrary, they are ordered to abstain from all interference with them, be they slavers or otherwise. But where reasonable suspicion exists that the American flag has been abused for the purpose of covering the vessel of another nation, it would appear scarcely credible, had it not been made manifest by the repeated protestations of their representative, that the government of the United States, which has stigmatized and abolished the trade itself, should object to the adoption of

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such means as are indispensably necessary for ascertaining the truth.

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The undersigned had contended in his former note that the legitimate inference from the arguments of Mr. Stevenson would practically extend even to the sanction of piracy, when the persons engaged in it should think fit to shelter themselves under the flag of the United States. Mr. Stevenson observes, that this is a misapprehension on the part of the undersigned; and he declares that, in denying the right of interfering with vessels under the American flag, he intended to limit his objection to vessels *bona fide* American, and not to those belonging to nations who might fraudulently have assumed the flag of the United States. But it appears to the undersigned that his former statement is by no means satisfactorily controverted by the declaration of Mr. Stevenson. How is this *bona fide* to be proved? Must not Mr. Stevenson either be prepared to maintain that the flag alone is sufficient evidence of the nationality of the vessel (which, in the face of his own repeated admissions, he can not do), or must he not confess that the application of his arguments would really afford protection to every lawless and piratical enterprise?

The undersigned had also expressed his belief that the practice was general of ascertaining, by visit, the real character of any vessel on the high seas against which there should exist reasonable ground of suspicion. Mr. Stevenson denies this; and he asks, what other nation than Great Britain had ever asserted, or attempted to exercise, such a right? In answer to this question, the undersigned can at once refer to the avowed and constant practice of the United States, whose cruisers, especially in the Gulf of Mexico, by the admission of their public journals, are notoriously in the habit of examining all suspicious vessels, whether sailing under the English flag or any other. In whose eyes are these vessels suspicious? Doubtless, in those of the commanders of the American cruisers. But, in truth, this right is quite as important to the United States as to Great Britain; nor is it easy to conceive how the maritime intercourse of mankind could safely be carried on without such a check.

It can scarcely be necessary to remind Mr. Everett that the right thus claimed by Great Britain is not exercised for any selfish purpose. It is asserted in the interest of humanity, and in mitigation of the sufferings of our fellow-men. The object has met with the concurrence of the whole civilized world, including the United States of America; and it ought to receive universal assistance and support.

The undersigned can not abstain here from referring to the conduct of an honorable and zealous officer commanding the

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naval force of the United States on the coast of Africa, who, relying on the sincere desire of his government for the suppression of the slave trade, and sensible of the abuse of the American flag, entered into an engagement on the 11th of March, 1840, with the officer in command of her majesty's cruisers on the same station, by which they mutually requested each other, and agreed, to detain all vessels under American colors employed in the traffic. If found to be American property, such vessels were to be delivered over to the commander of any American cruiser on the station; or, if belonging to other nations, they were to be dealt with according to the treaties contracted by her majesty with the respective states. The undersigned believes—and, indeed, after the statement of Mr. Stevenson, he regrets to be unable to doubt—that the conduct of this gallant officer, however natural and laudable in its object, has been disavowed by his government.

It is not the intention of the undersigned at present to advocate the justice and propriety of the mutual right of search, as conceded and regulated by treaty, or to weigh the reasons on account of which this proposal has been rejected by the government of the United States. He took occasion, in a former note, to observe, that concessions sanctioned by Great Britain and France were not likely to be incompatible with the dignity and independence of any other state which should be disposed to follow their example. But the undersigned begs now to inform Mr. Everett that he has this day concluded a joint treaty with France, Austria, Russia, and Prussia, by which the mutual right of search, within certain latitudes, is fully and effectually established forever. This is, in truth, a holy alliance, in which the undersigned would have rejoiced to see the United States assume their proper place among the great powers of Christendom, foremost in power, wealth, and civilization, and connected together in the cause of mercy and justice.

It is undoubtedly true that this right may be abused, like every other which is delegated to many and different hands. It is possible that it may be exercised wantonly and vexatiously; and should this be the case, it would not only call for remonstrance, but would justify resentment. This, however, is in the highest degree improbable; and if, in spite of the utmost caution, an error should be committed, and any American vessel should suffer loss and injury, it would be followed by prompt and ample reparation. The undersigned begs to repeat, that with American vessels, whatever be their destination, British cruisers have no pretension, in any manner, to interfere. Such vessels must be permitted, if engaged in it, to enjoy a monopoly of this unhallowed trade; but the British government will never endure that the fraudulent use of the American flag shall

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extend the iniquity to other nations by whom it is abhorred, and who have entered into solemn treaties with this country for its entire suppression.

In order to prove to Mr. Everett the anxiety of her majesty's government to prevent all reasonable grounds of complaint, the undersigned believes that he can not do better than to communicate to him the substance of those instructions under which the British cruisers act in relation to American vessels when employed on this service:

If, from the intelligence which the officer commanding her majesty's cruiser may have received, or from the maneuvers of the vessel, or from other sufficient cause, he shall have reason to believe that, although bearing the American flag, the vessel does not belong to the United States, he is ordered, if the state of the wind and weather shall admit of it, to go ahead of the suspected vessel, after communicating his intention by hailing, and to drop a boat on board of her to ascertain her nationality, without detaining her if she shall prove to be really an American vessel. But should this mode of visiting the vessel be impracticable, he is to require her to be brought to for this purpose. The officer who boards the vessel is merely to satisfy himself of her nationality by her papers, or other proofs; and should she really be an American vessel, he will immediately quit her, offering, with the consent of her commander, to note on her papers the cause of suspecting her nationality, and the number of minutes she was detained (if detained at all) for the object in question. All the particulars are to be immediately entered on the log-book of the cruiser, and a full statement of them is to be sent, by the first opportunity, direct to England.

These are the precautions taken by her majesty's government against the occurrence of abuse in the performance of this service; and they are ready to adopt any others which they may think more effectual for the purpose, and which shall at the same time be consistent with the attainment of the main object in view.

Mr. Stevenson has said that he had no wish to exempt the fraudulent use of the American flag from detection; and this being the case, the undersigned is unwilling to believe that a government like that of the United States, professing the same object and animated by the same motives as Great Britain, should seriously oppose themselves to every possible mode by which their own desire could be really accomplished.

The undersigned, &c. ABERDEEN.

EDWARD EVERETT, Esq., &c., &c., &c.

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Mr. Webster to Mr. Everett.—[EXTRACTS.]

DEPARTMENT OF STATE, *Washington, January* 29, 1842.

By the "Britannia," arrived at Boston, I have received your dispatch of the 28th of December (No. 4), and your dispatch of the 31st of the same month (No. 5), with a postscript of the 3d of January.

The necessity of returning an early answer to these communications (as the "Britannia" is expected to leave Boston the 1st of February) obliges me to postpone a reply to those parts of them which are not of considerable and immediate importance.

* * * * * * *

The President has read Lord Aberdeen's note to you of the 20th of December, in reply to Mr. Stevenson's note to Lord Palmerston of the 21st of October, and thinks you were quite right in acknowledging the dispassionate tone of that paper. It is only by the exercise of calm reason that truth can be arrived at in questions of a complicated nature; and between states, each of which understands and respects the intelligence and the power of the other, there ought to be no unwillingness to follow its guidance. At the present day, no state is so high as that the principles of its intercourse with other nations are above question, or its conduct above scrutiny. On the contrary, the whole civilized world, now vastly better informed on such subjects than in former ages, and alive and sensible to the principles adopted and the purposes avowed by the leading states, necessarily constitutes a tribunal august in character and formidable in its decisions. And it is before this tribunal, and upon the rules of natural justice, moral propriety, the usages of modern times, and the prescriptions of public law, that governments which respect themselves and respect their neighbors must be prepared to discuss, with candor and with dignity, any topics which may have caused differences to spring up between them.

Mr. Everett to Mr. Webster.—[EXTRACT.]

LEGATION OF THE UNITED STATES, *London, March* 1, 1842.

* * * * * * *

I received by the Britannia your dispatch No. 8, with the accompanying documents, relative to the case of the "*Creole.*" As my note to the British government on this subject must of necessity be somewhat long, I have thought it better to make the other matters referred to in your dispatch the subject of a separate communication to Lord Aberdeen. This communication I addressed to him on the 21st of February, and a copy of it is herewith inclosed.

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[INCLOSURE.]

Mr. Everett to Lord Aberdeen.—[EXTRACTS.]

LEGATION OF THE UNITED STATES, *February* 21, 1842.

The note of the Earl of Aberdeen to the undersigned of the 20th of December, in reply to Mr. Stevenson's to his lordship of the 21st of October, has been read by the President with satisfaction at the dispassionate tone with which Lord Aberdeen has discussed the delicate and important subject of that communication. The President considers that it is only by the exercise of calm reason that truth can be arrived at in questions of a complicated nature; and between states, each of which understands and respects the intelligence and the power of the other, there ought to be no unwillingness to follow its dictates. At the present day, no state is so high as that the principles of its intercourse with other nations are above question, or its conduct above scrutiny. On the contrary, the whole civilized world, now vastly better informed on such subjects than in former ages, and alive and sensible to the principles adopted and the purposes avowed by the leading states, necessarily constitutes a tribunal august in character and formidable in its decisions. It is before this tribunal, and upon the rules of natural justice, moral propriety, the usages of modern times, and the prescriptions of public law, that governments which respect themselves and respect their neighbors must, in the apprehension of the President, be prepared to discuss, with candor and with dignity, any topics which may have caused differences to spring up between them; and he places an undoubting reliance on the concurrence of her majesty's government in these views of the principles which must govern the intercourse of nations.

* * * * * *

The President of the United States has approved the conduct of the undersigned in forbearing, at the suggestion of the Earl of Aberdeen, to pursue the discussion here of topics which would form the subjects of negotiation between Lord Ashburton and the government of the United States at Washington. It is the duty, however, of the undersigned, to make an observation to Lord Aberdeen on the subject of American vessels detained, searched, and captured, which were enumerated in the note of the undersigned of December 27th. The undersigned is aware of the delay necessarily incident to official inquiries into transactions occurring in distant seas, and has every reason to be satisfied with the promptness with which Lord Aberdeen called the attention of the Lords of the Admiralty to these cases. Firmly persuaded, however, that the success of any attempt to negotiate on this subject, in any form, will de-

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pend upon the promptness with which redress is afforded in cases where wrong and injury have been inflicted, and with a view of presenting to her majesty's government, disconnected with other matters, a case which, it would seem to the undersigned, carries almost in its statement the materials for a safe opinion on its merits, the undersigned would respectfully invite the attention of Lord Aberdeen to the case of the "*Tigris.*" In this case, on slender grounds of suspicion that the vessel was engaged in the slave trade—grounds which, as the undersigned understands, were immediately overruled by the Circuit Court of the United States for the circuit of Massachusetts, before which the proceedings were had—the American vessel, the "*Tigris,*" was on the 7th October, 1840, by Lieutenant Matson, the commander of her majesty's brig "*Waterwitch,*" searched, captured, taken out of her course, her voyage broken up, and the vessel sent home, with a prize crew, under a very young and (as is alleged) intemperate officer. The peculiarity of this case is, that in a letter addressed by Mr. Matson "to the secretary, or registrar, of either of the circuit courts of the United States," he uses the following language: "These, sir, are my reasons *for taking upon myself the responsibility of detaining the 'Tigris;'* but, in doing so, I find myself placed in a very delicate position, *not having received any orders or instructions to interfere with vessels belonging to citizens of the United States, whatever their employment might be.*" This admission appears to deprive Lieutenant Matson of the justification relied upon in some cases in other respects similar, viz.: that which consisted in the agreement or understanding between Commodore Tucker and Lieutenant Commandant Paine, authorizing each other to institute a mutual search of British and American vessels engaged in the slave trade. Mr. Matson alleges no knowledge of that agreement, but expressly states that he acted on his own responsibility, and without orders or instructions.

In separating this case from the others, it is not the purpose of the undersigned to make a distinction in their merits, but to call the attention of her majesty's government to a case which, from the peculiar circumstances mentioned, would seem to admit a summary proceeding.

Mr. Everett to Mr. Webster.—[EXTRACTS.]

LEGATION OF THE UNITED STATES, *London, March* 23, 1842.

The queen's first levee was held on the 16th of March. While waiting in the room appropriated to the foreign ministers, Lord Aberdeen took me aside and informed me that he had an agreeable communication to make to me; which was, that the government had determined to indemnify the owners of the "*Tigris*" for the damage sustained by the detention of

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that ship on the coast of Africa by the "*Waterwitch*." He said he had examined the subject sufficiently to make up his mind that the claim was just, and that he would immediately address me a note to that effect, which he did the next day. A copy of his note and of my answer are herewith inclosed. Whether the documentary evidence in my hands, a copy of which accompanies my note to Lord Aberdeen, will be deemed sufficient, remains to be seen; but, at all events, the matter is in a happy train of adjustment.

I deem this an event of very great importance. You will bear in mind that the "*Tigris*" was one of four cases submitted by Mr. Stevenson to the British government in May last. Lord Palmerston did not refer them to the Admiralty till four months afterward. In my interview with Lord Aberdeen of the 27th of December, I found that his attention had not been drawn to these cases. I gave him their names, which he took down at the time, and, on my return home, I sent him a memorandum of them. Although I considered, with Lord Aberdeen, that the discussion of the question of search was, by the mission of Lord Ashburton, transferred to Washington—a view of the subject which the President has been pleased to approve—I deemed it highly important to keep the individual instances of outrage constantly before the government here, with whom, of course, the reports of their cruisers on the coast of Africa are deposited. I seized the opportunity, when addressing a note to Lord Aberdeen in obedience to the instructions contained in your dispatch of the 29th of January, expressing the satisfaction with which the mission of Lord Ashburton was regarded by the government of the United States, again to urge the case of the "*Tigris*" upon his consideration; this appearing to me the case admitting the readiest decision. I took care, however, to guard against any inference unfavorable to the strength of the other claims which might be drawn from putting this case prominently forward; and I shall urge the others at the proper time, in the manner best calculated to cause them to be favorably considered.

[INCLOSURE.]

FOREIGN OFFICE, *March* 17, 1842.

The undersigned, her majesty's principal Secretary of State for Foreign Affairs, has had the honor to receive the note addressed to him on the 21st ultimo by Mr. Everett, envoy extraordinary and minister plenipotentiary of the United States of America; and the undersigned has now the honor to acquaint Mr. Everett that her majesty's government have fully considered the case of the United States vessel "Tigris," adverted to in that note, as having been detained on the coast of

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Africa by the commander of her majesty's brig "Waterwitch," and sent to the United States of America for trial.

From the statement which the officer commanding the "Waterwitch" made in this case to the registrar of the United States Court, it appears that he was conscious of not being authorized, either by "instructions or orders" from his own government, "to interfere with vessels belonging to citizens of the United States, whatever their employment might be;" but that, in the course he adopted for enabling the courts of the United States to deal with a crime which the law has deemed to be a piracy, the commander of the "Waterwitch" believed he was performing "a duty which a British officer owed to the government of the United States."

The principle upon which this officer acted may, perhaps, in the eyes of the government of a friendly power, afford some ground of extenuation for the erroneous view which he took of his duty.

But her majesty's government acknowledge that the act of the officer commanding the "Waterwitch" was not justifiable upon any principle of international law, or by any existing treaty between Great Britain and the United States, and that the case is one in which compensation may justly be demanded by the United States government from the government of Great Britain.

The undersigned has, accordingly, the honor to request that Mr. Everett will direct the owners of the "Tigris" to send a statement, accompanied by documentary evidence, of the damage which they have sustained by the unauthorized act of the British officer, in order that the account, as soon as it shall have been substantiated to the satisfaction of her majesty's government, may at once be settled.

The undersigned avails himself of this occasion to renew to Mr. Everett the assurance of his distinguished consideration.

ABERDEEN.

E. EVERETT, Esq., &c., &c., &c.

[INCLOSURE.]

46 GROSVENOR PLACE, *March* 29, 1842.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, has the honor to acknowledge the receipt of the note of the Earl of Aberdeen, her majesty's principal Secretary of State for Foreign Affairs, dated 17th of March instant, in which Lord Aberdeen informs the undersigned that her majesty's government acknowledge that the act of the officer commanding the "*Waterwitch*," in detaining the American ship "*Tigris*" on the coast of Africa, was not justifiable on any principle of international law, or by

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any existing treaty between Great Britain and the United States, and that the case is one in which compensation may justly be demanded by the United States government from the government of Great Britain.

The undersigned has received this communication from the Earl of Aberdeen with the highest satisfaction, and will lose no time in transmitting it to his government. The President of the United States, the undersigned is persuaded, will regard it as a signal manifestation of the principles of justice which animate her majesty's government, and of a determination to repair the wrongs which have been inflicted upon the American flag and commerce in the African seas. From such a determination, thus manifested, the happiest influence on the relations of the two governments may be confidently anticipated.

In reference to the request of Lord Aberdeen to be furnished with a statement by the owners of the "*Tigris*," accompanied with documentary evidence, of the damage which they have sustained by the unauthorized act of the British officer, the undersigned has the honor herewith to transmit, for more convenient perusal, a copy of such a statement, which has lately been received from Washington. The original, duly authenticated, is also in the hands of the undersigned, and will be sent to Lord Aberdeen whenever a wish to that effect may be expressed by his lordship.

The undersigned has the honor to tender to Lord Aberdeen the assurance of his distinguished consideration.

EDWARD EVERETT.

The EARL OF ABERDEEN, &c., &c., &c.

Mr. Everett to Mr. Webster.—[EXTRACTS.]

LEGATION OF THE UNITED STATES, *London*, *June* 1, 1842.

Having received a letter from the owners of the "*Tigris*," inclosing an additional statement of their claim, I addressed a note to Lord Aberdeen transmitting a copy of the letter and statement. This will serve, for the present, to keep the subject before the government. If, within a reasonable time, I do not hear from them in reference to this claim, I shall press for its prompt adjustment, and at the same time inquire what progress has been made in the investigation of the other cases. A copy of my note to Lord Aberdeen on this subject is herewith transmitted. * * * * *

He (Lord Aberdeen) then observed that he had, within a day or two, received the statement of the officer by whom the "*Tigris*" was detained, and found that he was quite justified in her detention. I asked, on what ground? He replied, that he acted in virtue of the special agreement between Lieutenant Paine and Commodore Tucker; adding, "This, to be sure,

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makes no difference in the question as between the two governments, since that agreement was disavowed by yours; but it will relieve the officer of the personal responsibility, and throw it on the government." As this observation has a very important bearing on several cases of detention and capture which were discussed by Mr. Stevenson and Lord Palmerston, I must request your instructions on the subject of that agreement. * * * * * *

Meantime, you will please to understand that Lord Aberdeen distinctly stated that he did not intend, in consequence of the British officer (Lieutenant Matson, of the "*Waterwitch*") having acted under Lieutenant Paine's arrangement, to depart from his agreement to indemnify the owners of the "*Tigris*."

I observed to Lord Aberdeen, that, though it was not my business to interfere in any question between Lieutenant Matson and his government, I could not but remark to him that this officer himself, in a kind of circular letter, which he sent with the "*Tigris*," addressed to the courts of the United States, affirmed that he had taken upon himself the responsibility of detaining the "*Tigris*," and that he had received no orders or instructions to interfere with vessels belonging to citizens of the United States, whatever their employment might be. I added, that it seemed to me extraordinary that he should thus express himself, if, in fact, he was acting under specific instructions from the British commodore, given in consequence of the agreement with Mr. Paine. It looked like an after-thought on Mr. Matson's part. Lord Aberdeen was of a different opinion, but did not appear to have adverted particularly to the terms of Lieutenant Matson's letter, although they were quoted by me in the note which I addressed to him on the 21st of February.

[INCLOSURE.]

46 GROSVENOR PLACE, *May* 26, 1842.

Mr. Everett presents his compliments to the Earl of Aberdeen, and has the honor to inform his lordship that, on the receipt of Lord Aberdeen's note of the 17th of March, Mr. Everett lost no time in acquainting the owners of the "*Tigris*" with the purpose of her majesty's government to indemnify them for the losses sustained by the capture of their vessel. In conformity with the request of the Earl of Aberdeen, Mr. Everett desired the owners of the "*Tigris*" to transmit to him an authenticated statement of the damage they had sustained. This had been, in part, already done in the statement previously received by Mr. Everett from the Department of State at Washington, a copy of which was communicated by Mr. Everett to the Earl of Aberdeen on the 29th of March.

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Mr. Everett has within a few days received a letter from the owners of the "*Tigris*," inclosing an additional statement of their losses, which letter and the accompanying statement are herewith inclosed, in further compliance with Lord Aberdeen's request.

The Earl of Aberdeen, &c., &c., &c.

Mr. Everett to Mr. Webster.—[extract.]

London, *June* 17, 1842.

In my last dispatch I repeated a conversation which took place between Lord Aberdeen and myself, at the levee on the 1st instant, on the subject of compensation for the "*Seamew*," another of the vessels detained, searched, and sent out of her course in the African seas. Having waited a reasonable time without hearing further from Lord Aberdeen on the subject, I addressed him a note on the 13th instant, a copy of which is inclosed. I received on the 15th a private note from Lord Canning, the first Under Secretary of State, informing me that I should have an official answer to mine of the 13th in time for the next mail steamer. Accordingly, I received last evening a note from Lord Aberdeen, dated the 16th, which I herewith transmit, and which contains the official annunciation that this government will indemnify the owners of the "*Seamew*" for the loss sustained by the detention of their vessel. Lord Aberdeen's note contains some remarks on the subject of the treatment of the crew of the "*Seamew*" while on board the "*Persian*" (the British cruiser), the object of which is to show that the statement of the mate of the "*Seamew*," in reference to that matter, is false or exaggerated. It is of no great importance to pursue the discussion of such a point, although we must not allow it to be taken for granted that the statements of their people are necessarily true, and those of our officers and men false. I shall, in acknowledging the receipt of Lord Aberdeen's note, take care to protest against any such assumption.

As I am furnished in advance with documentary evidence, which I suppose will be sufficient to establish the amount of the loss in the case of the "*Seamew*," as well as that of the "*Tigris*," I anticipate no unreasonable delay in the final liquidation of the claims.

When the various modes are considered in which it would have been possible, pending the general negotiations at Washington, to postpone all final action on any cases of this kind without a positive denial of justice, I think the President will find, in the handsome manner in which reparation has been promised in these two cases, the proof of a sincere willingness on the part of the present ministry to do us justice.

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[INCLOSURE.]

LEGATION OF THE UNITED STATES, 46 *Grosvenor Place, June* 13, 1842

MY LORD,—At her majesty's levee, on the 1st instant, your lordship remarked to me that, from a cursory examination of papers recently transmitted from the Admiralty to the Foreign Office, relative to the detention and search of American vessels in the African seas, your lordship was led to think that, besides the case of the "Tigris," there was another case (your lordship thought that of the "*Seamew*") in which compensation would be found due from her majesty's government to the owners. I have now the honor respectfully to inquire whether there is any objection to my communicating this expression of your lordship's opinion to the government of the United States and the owners of the vessel, in my dispatches to be forwarded on the 19th instant.

The salutary influence of the annunciation in the United States of the decision of her majesty's government in the case of the "*Tigris*," and a persuasion that this influence would be greatly increased by the information I am desirous of communicating, form, with my conviction of the justice and reasonableness of the claims in question, my motives for submitting the present inquiry.

I have the honor to tender your lordship the assurance of my most distinguished consideration. EDWARD EVERETT.

THE EARL OF ABERDEEN, &c., &c., &c.

[INCLOSURE.]

FOREIGN OFFICE, *June* 16, 1842.

The undersigned, her majesty's principal Secretary of State for Foreign Affairs, has the honor to refer Mr. Everett, envoy extraordinary and minister plenipotentiary of the United States of America, to the several communications which have passed between her majesty's government and the legation of the United States relative to the case of the United States vessel "*Seamew*," detained by her majesty's ship "Persian," Commander Quin.

The undersigned has now the honor to inform Mr. Everett, that her majesty's government, having received the information collected on this subject, and having fully considered the case, have come to the conclusion that the seizure and detention of the "Seamew" by her majesty's ship "Persian" was not warranted either by the general law of nations, or by any particular treaty between this country and the United States of America.

There appears to be no doubt that the "Seamew" was not merely sailing under American colors, but that she was

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also *bona fide* American property, and manned by an American crew. A British cruiser had, therefore, no right to capture her, and her majesty's government acknowledge that the case is one in which compensation may justly be demanded by the government of the United States.

The undersigned, however, is glad to have it in his power to inform Mr. Everett, that while the evidence given in the course of the inquiry instituted into this case shows that Commander Quin was by no means justified in interfering with the "Seamew," it satisfactorily disproves the evidently inflamed and exaggerated statements made by some of the crew of that vessel as to the conduct of the officers of her majesty's ship "Persian," and their own personal sufferings on the voyage to St. Helena.

It is due to the memory of Commander Quin, and to the other officers of her majesty's navy concerned in this matter, to state that all possible care was taken in moving the cargo of the "Seamew" during the search; that it was restored safe and in good condition, exactly as before; and that the charge of carousing and riotous conduct preferred against the officer and petty officer of her majesty's ship "Persian" is most positively and fully denied.

With regard to the treatment experienced by the crew of the "Seamew" on board the "Persian," it may be sufficient to state that they were placed in the messes of the lower deck of that sloop, which were on full allowance of all provisions; and that, so far from any complaint being made, or any dissatisfaction shown by them, they, on the decease of Commander Quin, asked and obtained permission to show their respect for that officer by following his body to the grave; and that, finally, Mr. Shreve, the second mate of the "Seamew," was landed with his own men at St. Helena, at his own request; and, before he left the vessel, came to the officer in command of the "Persian," on the quarter-deck, and thanked him for the kindness they had received while on board that sloop.

It now only remains for the undersigned to inform Mr. Everett that the statement made by the owners of the "Seamew" as to the losses they have sustained, and which was inclosed in Mr. Everett's note to the undersigned of the 29th of March last, will be transmitted to the proper department, in order that, as soon as the account shall have been substantiated to the satisfaction of her majesty's government, it may at once be settled.

The undersigned avails himself of this occasion to renew to Mr. Everett the assurance of his distinguished consideration.

ABERDEEN.

EDWARD EVERETT, Esq., &c., &c., &c.

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Mr. Everett to Mr. Webster.—[EXTRACT.]

LEGATION OF THE UNITED STATES, *London, July* 1, 1842.

* * * * * * *

With my last dispatch I transmitted a note from the Earl of Aberdeen, announcing the purpose of this government to make compensation to the owners of the "*Seamew.*" I now beg leave to send you my answer to Lord Aberdeen's note. Although the discussion of the conduct of the British boarding officers is of no great interest, I thought it necessary to reply to the remarks of Lord Aberdeen on that point.

[INCLOSURE.]

LEGATION OF THE UNITED STATES, *June* 30, 1842.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, has the honor to acknowledge the receipt of a note of the 16th instant from the Earl of Aberdeen, her majesty's principal Secretary of State for Foreign Affairs, announcing the intention of her majesty's government to make compensation to the owners of the "Seamew" for the loss sustained by them in consequence of the detention of their vessel on the coast of Africa, on the 27th of October, 1840.

The undersigned has had great pleasure in transmitting this note to his government, by whom he is sure it will be regarded as a new and highly satisfactory proof of the purpose of the government of her majesty to render full and prompt justice to the citizens of the United States who have suffered losses by the detention and capture of their vessels by her majesty's cruisers in the African seas.

The undersigned supposes that the documents already transmitted by him to the Earl of Aberdeen relative to the "*Tigris*" and "*Seamew*"—the property of the same owners—will be deemed to contain a satisfactory statement of the nature and amount of their losses. The originals of those documents will be furnished to Lord Aberdeen whenever his lordship may be pleased to express a wish to that effect. The undersigned is persuaded the moderation of the estimates will not escape Lord Aberdeen's notice, and will contribute to a speedy and satisfactory settlement of the claims.

In reference to Lord Aberdeen's remark on what his lordship considers "the evidently inflamed and exaggerated statements made by some of the crew of the '*Seamew*,'" the undersigned will observe that if such be indeed the character of their statements, it ought to be remembered that, on any supposition as to facts, the provocation was extreme. If the master and crew of an unarmed merchantman, unlawfully dispossessed of

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their vessel, and their property contained in it, carried by force on board a foreign cruiser, and finally compelled to find their way home as they can, should relate what had happened in terms of exaggeration, and even bitterness, the candor of Lord Aberdeen will admit that it would not be matter of reproach or wonder.

The most serious of the complaints against the officers of the "*Persian*" are made on oath by the captain and mate of the "*Seamew*." The undersigned admits that they are not impartial witnesses, but they have no strong interest to exaggerate the ill-treatment which they say they received. Without any desire to impeach the credibility of the evidence given in behalf of the officers of the "*Persian*," if, as the undersigned supposes, their personal liability depends in some degree upon their conduct in boarding and overhauling the vessel, they have a direct and powerful interest to represent their behavior in the most favorable manner.

That the cargo of the "*Seamew*" "was restored safe and in good condition exactly as before," would seem to be, in the nature of things, scarcely possible. It could not be believed, but on the strongest and most unexceptionable evidence, that a man-of-war's crew, overhauling a foreign merchantman in a distant sea, under suspicion of being concerned in the slave trade, and displacing and replacing her whole cargo in one operation, should perform it with the same care with which that cargo was gradually laid in by those whose livelihood depends on the manner in which their work is performed: men admitted to be the most prudent and careful mariners in the world. It appears, moreover, from the report of the persons by whom the "*Seamew*" was surveyed at St. Helena—two of whom were American and two British captains of vessels—that the cargo, on the arrival of the vessel there, was actually found in a condition in which scarce any evidence would persuade the undersigned that a Salem shipmaster had originally stowed it. The undersigned, &c.

EDWARD EVERETT.

The EARL OF ABERDEEN, &c., &c., &c.

[INCLOSURE.]

DEPARTMENT OF STATE, *Washington, February*, 1843.

The Secretary of State, to whom has been referred a resolution of the House of Representatives of the 22d instant, requesting that the President of the United States "communicate to that House, if not in his opinion improper, whatever correspondence or communication may have been received from the British government respecting the President's construction of the late British treaty concluded at Washington, as it concerns

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an alleged right to visit American vessels," has the honor to report to the President that Mr. Fox, her Britannic majesty's envoy extraordinary and minister plenipotentiary, came to the Department of State on the 24th instant, and informed the Secretary that he had received from Lord Aberdeen, her majesty's principal Secretary of State for Foreign Affairs, a dispatch, under date of the 18th of January, which he was directed to read to the Secretary of State of the United States. The substance of the dispatch was, that there was a statement in a paragraph of the President's Message to Congress, at the opening of the present session, of serious import, because, to persons unacquainted with the facts, it would tend to convey the supposition not only that the question of the right of search had been disavowed by the plenipotentiary at Washington, but that Great Britain had made concessions on that point.

That the President knew that the right of search never formed the subject of discussion during the late negotiation, and that neither was any concession required by the United States government, nor made by Great Britain.

That the engagement entered into by the parties to the treaty of Washington for suppressing the African slave trade was unconditionally proposed and agreed to.

That the British government saw in it an attempt, on the part of the government of the United States, to give a practical effect to their repeated declarations against that trade, and recognized with satisfaction an advance toward the humane and enlightened policy of all Christian states, from which they anticipated much good. That Great Britain would scrupulously fulfill the conditions of this engagement, but that from the principles which she has constantly asserted, and which are recorded in the correspondence between the ministers of the United States in England and herself in 1841, England has not receded, and would not recede. That he had no intention to renew, at present, the discussion upon the subject. That his last note was yet unanswered. That the President might be assured that Great Britain would always respect the just claims of the United States. That the British government made no pretension to interfere, in any manner whatever, either by detention, visit, or search, with vessels of the United States, known or believed to be such; but that it still maintained, and would exercise, when necessary, its own right to ascertain the genuineness of any flag which a suspected vessel might bear; that if, in the exercise of this right, either from involuntary error, or in spite of every precaution, loss or injury should be sustained, a prompt reparation would be afforded; but that it should entertain, for a single instant, the notion of abandoning the right itself, would be quite impossible.

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That these observations had been rendered necessary by the message to Congress. That the President is undoubtedly at liberty to address that assembly in any terms which he may think proper; but if the queen's servants should not deem it expedient to advise her majesty also to advert to these topics in her speech from the throne, they desired, nevertheless, to hold themselves perfectly free, when questioned in Parliament, to give all such explanations as they might feel to be inconsistent with their duty and necessary for the elucidation of the truth.

The paper having been read and its contents understood, Mr. Fox was told, in reply, that the subject would be taken into consideration, and that a dispatch relative to it would be sent at an early day to the American minister in London, who would have instructions to read it to her majesty's principal Secretary of State for Foreign Affairs.

DANIEL WEBSTER.

To the PRESIDENT.

Mr. Webster to Mr. Everett.

DEPARTMENT OF STATE, *Washington, March* 28, 1843.

SIR,—I transmit to you with this dispatch a message from the President of the United States to Congress, communicated on the 27th of February, and accompanied by a report made from this department to the President, of the substance of a dispatch from Lord Aberdeen to Mr. Fox, which was by him read to me on the 24th ultimo.

Lord Aberdeen's dispatch, as you will perceive, was occasioned by a passage in the President's message to Congress at the opening of its late session. The particular passage is not stated by his lordship; but no mistake will be committed, it is presumed, in considering it to be that which was quoted by Sir Robert Peel and other gentlemen in the debate in the House of Commons, on the answer to the queen's speech, on the 3d of February.

The President regrets that it should have become necessary to hold a diplomatic correspondence upon the subject of a communication from the head of the executive government to the Legislature, drawing after it, as in this case, the further necessity of referring to observations made by persons in high and responsible stations, in debates of public bodies. Such a necessity, however, seems to be unavoidably incurred in consequence of Lord Aberdeen's dispatch; for, although the President's recent message may be regarded as a clear exposition of his opinions on the subject, yet a just respect for her majesty's government, and a disposition to meet all questions with promptness, as well as with frankness and candor, require that a formal answer should be made to that dispatch.

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The words in the message at the opening of the session which are complained of, it is supposed, are the following: "Although Lord Aberdeen, in his correspondence with the American envoys at London, expressly disclaimed all right to detain an American ship on the high seas, even if found with a cargo of slaves on board, and restricted the British pretension to a mere claim to visit and inquire, yet it could not well be discerned by the executive of the United States how such visit and inquiry could be made without detention on the voyage, and consequent interruption to the trade. It was regarded as the right of search, presented only in a new form, and expressed in different words; and I therefore felt it to be my duty distinctly to declare, in my annual message to Congress, that no such concession could be made, and that the United States had both the will and the ability to enforce their own laws, and to protect their flag from being used for purposes wholly forbidden by those laws, and obnoxious to the moral censure of the world."

This statement would tend, as Lord Aberdeen thinks, to convey the supposition, not only that the question of the right of search had been disavowed by the British plenipotentiary at Washington, but that Great Britain had made concessions on that point.

Lord Aberdeen is entirely correct in saying that the claim of a right of search was not discussed during the late negotiation, and that neither was any concession required by this government, nor made by that of her Britannic majesty.

The 8th and 9th articles of the Treaty of Washington constitute a mutual stipulation for concerted efforts to abolish the African slave trade. This stipulation, it may be admitted, has no other effects on the pretensions of either party than this: Great Britain had claimed as a *right* that which this government could not admit to be a *right*, and, in the exercise of a just and proper spirit of amity, a mode was resorted to which might render unnecessary both the assertion and the denial of such claim.

There probably are those who think that what Lord Aberdeen calls a right of visit, and which he attempts to distinguish from the right of search, ought to have been expressly acknowledged by the government of the United States; at the same time, there are those on the other side who think that the formal surrender of such right of visit should have been demanded by the United States as a precedent condition to the negotiation for treaty stipulations on the subject of the African slave trade. But the treaty neither asserts the claim in terms, nor denies the claim in terms; it neither formally insists upon it, nor formally renounces it. Still, the whole proceeding shows that the object of the stipulation was to avoid such dif-

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ferences and disputes as had already arisen, and the serious practical evils and inconveniences which, it can not be denied, are always liable to result from the practice which Great Britain had asserted to be lawful. These evils and inconveniences had been acknowledged by both governments. They had been such as to cause much irritation, and to threaten to disturb the amicable sentiments which prevailed between them. Both governments were sincerely desirous of abolishing the slave trade; both governments were equally desirous of avoiding occasion of complaint by their respective citizens and subjects; and both governments regarded the 8th and 9th articles as effectual for their avowed purpose, and likely, at the same time, to preserve all friendly relations, and to take away causes of future individual complaints. The Treaty of Washington was intended to fulfill the obligations entered into by the Treaty of Ghent. It stands by itself; is clear and intelligible. It speaks its own language, and manifests its own purpose. It needs no interpretation, and requires no comment. As a fact, as an important occurrence in national intercourse, it may have important bearings on existing questions respecting the public law; and individuals, or perhaps governments, may not agree as to what these bearings really are. Great Britain has discussions, if not controversies, with other great European states upon the subject of visit or search. These states will naturally make their own commentary on the Treaty of Washington, and draw their own inferences from the fact that such a treaty has been entered into. Its stipulations, in the mean time, are plain, explicit, and satisfactory to both parties, and will be fulfilled on the part of the United States, and, it is not doubted, on the part of Great Britain also, with the utmost good faith.

Holding this to be the true character of the treaty, I might, perhaps, excuse myself from entering into the consideration of the grounds of that claim of a right to visit merchant ships for certain purposes, in time of peace, which Lord Aberdeen asserts for the British government, and declares that it can never surrender. But I deem it right, nevertheless, and no more than justly respectful toward the British government, not to leave the point without remark.

In his recent message to Congress, the President, referring to the language of Lord Aberdeen in his note to Mr. Everett of the 20th of December, 1841, and in his late dispatch to Mr. Fox, says: "These declarations may well lead us to doubt whether the apparent difference between the two governments is not rather one of definition than of principle."

Lord Aberdeen, in his note to you of the 20th of December, says: "The undersigned again renounces, as he has already

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done in the most explicit terms, any right on the part of the British government to search American vessels in time of peace. The right of search, except when specially conceded by treaty, is a purely belligerent right, and can have no existence on the high seas during peace. The undersigned apprehends, however, that the right of search is not confined to the verification of the nationality of the vessel, but also extends to the object of the voyage and the nature of the cargo. The sole purpose of the British cruisers is to ascertain whether the vessels they meet with are really American or not. The right asserted has, in truth, no resemblance to the right of search, either in principle or practice. It is simply a right to satisfy the party who has a legitimate interest in knowing the truth, that the vessel actually is what her colors announce. This right we concede as freely as we exercise. The British cruisers are not instructed to detain American vessels under any circumstances whatever; on the contrary, they are ordered to abstain from all interference with them, be they slavers or otherwise. But where reasonable suspicion exists that the American flag has been abused for the purpose of covering the vessel of another nation, it would appear scarcely credible, had it not been made manifest by the repeated protestations of their representative, that the government of the United States, which has stigmatized and abolished the trade itself, should object to the adoption of such means as are indispensably necessary for ascertaining the truth."

And in his recent dispatch to Mr. Fox, his lordship further says, "that the President might be assured that Great Britain would always respect the just claims of the United States. That the British government made no pretension to interfere in any manner whatever, either by detention, visit, or search, with vessels of the United States, known or believed to be such; but that it still maintained, and would exercise when necessary, its own right to ascertain the genuineness of any flag which a suspected vessel might bear; that if, in the exercise of this right, either from involuntary error, or in spite of every precaution, loss or injury should be sustained, a prompt reparation would be afforded; but that it should entertain, for a single instant, the notion of abandoning the right itself, would be quite impossible."

This, then, is the British claim, as asserted by her majesty's government.

In his remarks in the speech already referred to, in the House of Commons, the first minister of the crown said: "There is nothing more distinct than the right of visit is from the right of search. Search is a belligerent right, and not to be exercised in time of peace, except when it has been conced-

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ed by treaty. The right of search extends not only to the vessel, but to the cargo also. The right of visit is quite distinct from this, though the two are often confounded. The right of search, with respect to American vessels, we entirely and utterly disclaim; nay, more, if we knew that an American vessel were furnished with all the materials requisite for the slave trade; if we knew that the decks were prepared to receive hundreds of human beings within a space in which life is almost impossible, still we should be bound to let that American vessel pass on. But the right we claim is to know whether a vessel pretending to be American, and hoisting the American flag, be *bona fide* American."

The President's Message is regarded as holding opinions in opposition to these.

The British government, then, supposes that the right of visit and the right of search are essentially distinct in their nature, and that this difference is well known and generally acknowledged; that the difference between them consists in their different objects and purposes: one, the visit, having for its object nothing but to ascertain the nationality of the vessel; the other, the search, by an inquisition, not only into the nationality of the vessel, but the nature and object of her voyage, and the true ownership of her cargo.

The government of the United States, on the other hand, maintains that there is no such well-known and acknowledged, nor, indeed, any broad and generic difference between what has been usually called visit, and what has been usually called search; that the right of visit, to be effectual, must come, in the end, to include search; and thus to exercise, in peace, an authority which the law of nations only allows in times of war. If such well-known distinction exists, where are the proofs of it? What writers of authority on public law, what adjudications in courts of Admiralty, what public treaties recognize it? No such recognition has presented itself to the government of the United States; but, on the contrary, it understands that public writers, courts of law, and solemn treaties have, for two centuries, used the words "visit" and "search" in the same sense. What Great Britain and the United States mean by the "right of search," in its broadest sense, is called by Continental writers and jurists by no other name than the "right of visit." Visit, therefore, as it has been understood, implies not only a right to inquire into the national character, but to detain the vessel, to stop the progress of the voyage, to examine papers, to decide on their regularity and authenticity, and to make inquisition on board for enemy's property, and into the business which the vessel is engaged in. In other words, it describes the entire right of belligerent visitation and search. Such a

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right is justly disclaimed by the British government in time of peace. They, nevertheless, insist on a right which they denominate a right of visit, and by that word describe the claim which they assert. It is proper, and due to the importance and delicacy of the questions involved, to take care that, in discussing them, both governments understand the terms which may be used in the same sense. If, indeed, it should be manifest that the difference between the parties is only verbal, it might be hoped that no harm would be done; but the government of the United States thinks itself not justly chargeable with excessive jealousy, or with too great scrupulosity in the use of words, in insisting on its opinion that there is no such distinction as the British government maintains between visit and search; and that there is no right to visit in time of peace, except in the execution of revenue laws or other municipal regulations, in which cases the right is usually exercised near the coast, or within the marine league, or where the vessel is justly suspected of violating the law of nations by piratical aggression; but, wherever exercised, it is a right of search. Nor can the United States government agree that the term "right" is justly applied to such exercise of power as the British government thinks it indispensable to maintain in certain cases.

The right asserted is a right to ascertain whether a merchant vessel is justly entitled to the protection of the flag which she may happen to have hoisted, such vessel being in circumstances which render her liable to the suspicion, first, that she is not entitled to the protection of the flag; and, secondly, that, if not entitled to it, she is, either by the law of England, as an English vessel, or under the provisions of treaties with certain European powers, subject to the supervision and search of British cruisers.

And yet Lord Aberdeen says, "that if, in the exercise of this right, either from involuntary error, or in spite of every precaution, loss or injury should be sustained, a prompt reparation would be afforded."

It is not easy to perceive how these consequences can be admitted justly to flow from the fair exercise of a clear right. If injury be produced by the exercise of a right, it would seem strange that it should be repaired, as if it had been the effect of a wrongful act. The general rule of law certainly is, that, in the proper and prudent exercise of his own right, no one is answerable for undesigned injuries. It may be said that the right is a qualified right; that it is a right to do certain acts of force at the risk of turning out to be wrong-doers, and of being made answerable for all damages. But such an argument would prove every trespass to be matter of right, subject only to just responsibility. If force were allowed to such rea-

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soning in other cases, it would follow that an individual's right in his own property was hardly more than a well-founded claim for compensation if he should be deprived of it. But compensation is that which is rendered for injury, and is not commutation, or forced equivalent, for acknowledged rights. It implies, at least in its general interpretation, the commission of some wrongful act.

But, without pressing further these inquiries into the accuracy and propriety of definitions and the use of words, I proceed to draw your attention to the thing itself, and to consider what these acts are which the British government insists its cruisers have a right to perform, and to what consequences they naturally and necessarily tend. An eminent member of the House of Commons thus states the British claim, and his statement is acquiesced in and adopted by the first minister of the crown:

"The claim of this country is for the right of our cruisers to ascertain whether a merchant vessel is justly entitled to the protection of the flag which she may happen to have hoisted, such vessel being in circumstances which rendered her liable to the suspicion, first, that she was not entitled to the protection of the flag; and, secondly, if not entitled to it, she was, either under the law of nations or the provisions of treaties, subject to the supervision and control of our cruisers."*

Now the question is, *by what means* is this ascertainment to be effected?

As we understand the general and settled rules of public law, in respect to ships of war sailing under the authority of their government, "to arrest pirates and other public offenders," there is no reason why they may not approach any vessels descried at sea for the purpose of ascertaining their real characters. Such a right of approach seems indispensable for the fair and discreet exercise of their authority; and the use of it can not be justly deemed indicative of any design to insult or injure those they approach, or to impede them in their lawful commerce. On the other hand, it is as clear that no ship is, under such circumstances, bound to lie by, or wait the approach of any other ship. She is at full liberty to pursue her voyage in her own way, and to use all necessary precautions to avoid any suspected sinister enterprise or hostile attack. Her right to the free use of the ocean is as perfect as that of any other ship. An entire equality is presumed to exist. She has a right to consult her own safety, but at the same time she must take care not to violate the rights of others. She may use any precautions dictated by the prudence or fears of her officers, either as to delay, or the progress or course of her

* Mr. Wood, now Sir Charles Wood, Chancellor of the Exchequer.

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voyage; but she is not at liberty to inflict injuries upon other innocent parties simply because of conjectural dangers.

But if the vessel thus approached attempts to avoid the vessel approaching, or does not comply with her commander's order to send him her papers for his inspection, nor consent to be visited or detained, what is next to be done? Is force to be used? And if force be used, may that force be lawfully repelled? These questions lead at once to the elemental principle —the essence of the British claim. Suppose the merchant vessel be in truth an American vessel engaged in lawful commerce, and that she does not choose to be detained. Suppose she resists the visit. What is the consequence? In all cases in which the belligerent right of visit exists, resistance to the exercise of that right is regarded as just cause of condemnation, both of vessel and cargo. Is that penalty, or what other penalty, to be incurred by resistance to visit in time of peace? Or suppose that force be met by force, gun returned for gun, and the commander of the cruiser, or some of his seamen, be killed; what description of offense will have been committed? It would be said, in behalf of the commander of the cruiser, that he mistook the vessel for a vessel of England, Brazil, or Portugal; but does this mistake of his take away from the American vessel the right of self-defense? The writers of authority declare it to be a principle of natural law, that the privilege of self-defense exists against an assailant who mistakes the object of his attack for another whom he had the right to assail.

Lord Aberdeen can not fail to see, therefore, what serious consequences might ensue if it were to be admitted that this claim to visit, in time of peace, however limited or defined, should be permitted to exist as a strict matter of right; for if it exist as a right, it must be followed by corresponding duties and obligations, and the failure to fulfill those duties would naturally draw penal consequences after it, till ere long it would become, in truth, little less, or little other than the belligerent right of search.

If visit or visitation be not accompanied by search, it will be in most cases merely idle. A sight of papers may be demanded, and papers may be produced. But it is known that slave traders carry false papers, and different sets of papers. A search for other papers, then, must be made where suspicion justifies it, or else the whole proceeding would be nugatory. In suspicious cases, the language and general appearance of the crew are among the means of ascertaining the national character of the vessel. The cargo on board, also, often indicates the country from which she comes. Her log-book, showing the previous course and events of her voyage, her internal fitment and equipment, are all evidences for her, or against her, on her al-

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legation of character. These matters, it is obvious, can only be ascertained by rigorous search.

It may be asked, if a vessel may not be called on to show her papers, why does she carry papers? No doubt she may be called on to show her papers; but the question is, where, when, and by whom? Not in time of peace, on the high seas, where her rights are equal to the rights of any other vessel, and where none has a right to molest her. The use of her papers is, in time of war, to prove her neutrality when visited by belligerent cruisers; and in both peace and war, to show her national character, and the lawfulness of her voyage, in those ports of other countries to which she may proceed for purposes of trade.

It appears to the government of the United States that the view of this whole subject which is the most naturally taken is also the most legal, and most in analogy with other cases. British cruisers have a right to detain British merchantmen for certain purposes; and they have a right, acquired by treaty, to detain merchant vessels of several other nations for the same purposes. But they have no right at all to detain an American merchant vessel. This Lord Aberdeen admits in the fullest manner. Any detention of an American vessel by a British cruiser is therefore a wrong—a trespass; although it may be done under the belief that she was a British vessel, or that she belonged to a nation which had conceded the right of such detention to the British cruisers, and the trespass therefore an involuntary trespass. If a ship of war, in thick weather, or in the darkness of the night, fire upon and sink a neutral vessel, under the belief that she is an enemy's vessel, this is a trespass —a mere wrong; and can not be said to be an act done under any right, accompanied by responsibility for damages. So if a civil officer on land have process against one individual, and through mistake arrest another, this arrest is wholly tortious: no one would think of saying that it was done under any lawful exercise of authority, subject only to responsibility, or that it was any thing but a mere trespass, though an unintentional trespass. The municipal law does not undertake to lay down beforehand any rule for the government of such cases; and as little, in the opinion of the government of the United States, does the public law of the world lay down beforehand any rule for the government of cases of involuntary trespasses, detentions, and injuries at sea; except that in both classes of cases law and reason make a distinction between injuries committed through mistake and injuries committed by design: the former being entitled to fair and just compensation—the latter demanding exemplary damages, and sometimes personal punishment. The government of the United States has frequently made known its opinion, which it now repeats, that the practice of

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detaining American vessels, though subject to just compensation, if such detention afterward turn out to have been without good cause, however guarded by instructions, or however cautiously exercised, necessarily leads to serious inconvenience and injury. The amount of loss can not be always well ascertained. Compensation, if it be adequate in the amount, may still necessarily be long delayed; and the pendency of such claims always proves troublesome to the governments of both countries. These detentions, too, frequently irritate individuals, cause warm blood, and produce nothing but ill effects on the amicable relations existing between the countries. We wish, therefore, to put an end to them, and to avoid all occasions for their recurrence.

On the whole, the government of the United States, while it has not conceded a mutual right of visit or search, as has been done by the parties to the quintuple treaty of December, 1841, does not admit that, by the law and practice of nations, there is any such thing as a right of visit, distinguished by well-known rules and definitions from the right of search.

It does not admit that visit of American merchant vessels by British cruisers is founded on any right, notwithstanding the cruiser may suppose such vessel to be British, Brazilian, or Portuguese. We can not but see that the detention and examination of American vessels by British cruisers has already led to consequences—and fear that, if continued, it would still lead to further consequences—highly injurious to the lawful commerce of the United States.

At the same time, the government of the United States fully admits that its flag can give no immunity to pirates, nor to any other than to regularly documented American vessels. It was upon this view of the whole case, and with a firm conviction of the truth of these sentiments, that it cheerfully assumed the duties contained in the Treaty of Washington; in the hope that thereby causes of difficulty and of difference might be altogether removed, and that the two powers might be enabled to act concurrently, cordially, and effectually for the suppression of a traffic which both regard as a reproach upon the civilization of the age, and at war with every principle of humanity and every Christian sentiment.

The government of the United States has no interest, nor is it under the influence of any opinions, which should lead it to desire any derogation of the just authority and rights of maritime power. But in the convictions which it entertains, and in the measures which it has adopted, it has been governed solely by a sincere desire to support those principles and those practices which it believes to be conformable to public law, and favorable to the peace and harmony of nations.

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Both houses of Congress, with a remarkable degree of unanimity, have made express provisions for carrying into effect the 8th article of the treaty. An American squadron will immediately proceed to the coast of Africa. Instructions for its commander are in the course of preparation, and copies will be furnished to the British government; and the President confidently believes that the cordial concurrence of the two governments, in the mode agreed on, will be more effectual than any efforts yet made for the suppression of the slave trade.

You will read this dispatch to Lord Aberdeen, and, if he desire it, give him a copy. I am, sir, &c., &c.,

DANIEL WEBSTER.

EDWARD EVERETT, Esq., &c., &c., &c.

Mr. Cass to Mr. Webster.

LEGATION OF THE UNITED STATES, *Paris, February* 15, 1842.

SIR,—I have not heretofore considered it necessary to write you officially respecting the state of affairs here having relation to the question of the right of search depending between the American and British governments. But though no direct diplomatic action seemed advisable till recently, I did not the less observe the progress of events, nor neglect, by proper conversations and explanations with those who, from their position, influenced them, to convey a just notion of the subject, in its relation not only to the United States, but to all other maritime powers who do not seek the supremacy of the seas; and I have the satisfaction to believe that my exertions were not wholly useless, either with respect to public opinion or to public measures. I have kept you informed, in my private communications, of the progress of affairs, as well as of my own course of unofficial action; and I have transmitted, also, such of the French journals as seemed, in addition to the other information, best calculated to convey to you a correct idea of the state of affairs here, and of public feeling.

But I have just taken a step which renders necessary a full and free report of the condition of things here, and of the reasons which have led me to adopt this measure. My letter of the 13th instant to the Minister of Foreign Affairs (a copy of which I inclose) will make known to you my general sentiments concerning the relation in which we are placed with the French government by the signature of the quintuple treaty for the suppression of the slave trade, and by the declarations of Lord Palmerston and Lord Aberdeen concerning the measures which they claim to be indispensable to its execution. I need add nothing upon this subject.

I hesitated, at first, respecting the true course to be adopted. That it was proper to bring officially to the notice of the French

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government the declaration of that of Great Britain—that the conclusion of these treaties created an obligation and conferred a right to violate the flag of the United States—I did not entertain a doubt. What was true of the duty of one of the parties was true of the duty of each of them. Either, therefore, the claim of Great Britain was well-founded, and, in that event, the government of France was about to contract new obligations, which might bring it into collision with the United States—a result I was certain it did not contemplate—or the claim was unjust, and, in that event, the treaty was about to be made the pretext of a direct attack upon our rights and honor by one of the parties, assuming to be governed by the obligations it had contracted toward the other associated powers; a state of things which gave us a right to call upon them to disavow such pretensions, and either to withdraw from an arrangement which was becoming so menacing to us, or to declare, by a solemn act, that it was not susceptible of such a construction, and should not, with their consent, be employed for such a purpose. My first impression was, to present a formal protest against the ratification of the treaty; but, considering that I had no instructions to take so decided a measure, and that it would be more respectful to the French government (of whose friendly disposition to the United States I have had numerous evidences), and probably quite as useful, to state generally the bearing of the whole matter upon the United States, without claiming any specific action, I finally determined to take this course, and the letter to M. Guizot is the consequence.

I shall now proceed to make some remarks upon this general subject, which may not be useless in the consideration which the government will necessarily give to it. For some years the English journals have, with much art, turned the public attention of Europe from the great question of maritime right and of the freedom of the seas, involved in our discussions with Great Britain, connected with the measures to be adopted for the suppression of the slave trade, and directed it to that infamous traffic, sometimes asserting, and sometimes insinuating, that our opposition to the co-operation their government proposed originated in the miserable motive of profit—the profit to be derived from the most wretched of all commerce. But, thanks to the progress of truth, our case is now well understood upon the continent of Europe; and, as in all sudden reactions where injustice has been unwillingly done, the public sentiment here and elsewhere is setting strongly in our favor. The question has not again been presented in either of the chambers; but the indications in the journals, and in all societies, are too clear to be misunderstood.

Circumstances have placed us in a position which, if firmly

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maintained, will be equally honorable to ourselves, and useful to all other powers interested in the freedom of the seas. Depend upon it, we have reached one of those epochs in the progress of a nation to which history looks back, if not as decisive of its destiny, at all events as influencing it, and as controlling its character and its conduct for a long series of years. England has advanced a pretension which we can never submit to without dishonor; and, in its enunciation, she has spared our pride as little as our rights. On the 27th of August, 1841, she avows the determination, and claims the right, to search our ships; and this interpolation into the law of nations is advanced with a coolness which might well surprise us, if any thing could surprise us, in the march of human ambition.

The pretension is not put forth as a debatable point, to be discussed between the two governments, and to be settled in a mutual spirit of amity. But Lord Palmerston distinctly tells us that the exemption of the vessels of the United States from search *is a doctrine to which the British government never can nor will subscribe.* And he adds, with a rare comity indeed, that he hopes the day is not far distant when the government of the United States will cease to confound two things which are in their nature entirely different—*will look to things, and not to words*—and, becoming wiser from the lessons thus taught, will suffer the British cruisers to search their vessels at all times and in all places, and content themselves with calling it a visit! For myself, I see no mutual concession by which the parties may be brought together. A contested territory may be divided, and a claim for pecuniary injury may be reduced and satisfied, but we can not divide a great principle—one of the attributes of our independence—nor reduce the sphere of its operation. We can only demand its inviolability with its just consequences. Under these circumstances, the first question is, if we shall yield; and that being answered in the negative, as I am satisfied it will be by the universal feeling of the country, the next is, will England yield? It is our safer course to believe that she will not, and, looking to her line of policy, that, too, is our most rational course. Wherever she has planted her foot, whether on marsh, moor, or mountain, under the polar circles as under the tropics, I will not say never—that word does not belong to the deeds of war—but rarely has she voluntarily withdrawn it. Whenever she has asserted a pretension, she has adhered to it through evil report and through good report, in prosperity and in adversity, with an iron will and with a firm hand, of which the history of the world furnishes, perhaps, no equal example since the proudest days of the Roman empire. In this consistency of purpose, and in the excess even of patriotism which ministers

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to it, there is something noble and imposing; and I am among the last to deny the beautiful traits of the English character, or the benefits which England has rendered to the world by her example and her efforts. But she is not the less dangerous in her schemes of ambition from these redeeming considerations; and the time has come when we must look her designs in the face, and determine to resist or to yield. War is a great evil; but there are evils greater than war, and among these is national degradation. This we have never yet experienced, and I trust we never shall. If Lord Ashburton goes out with such modified propositions upon the various questions now pending between the two governments as you can honorably accept, the result will be a subject of lasting gratification to our country; and more particularly if, as I trust, before entering into any discussions, he is prepared to give such explanations as will show that we have misunderstood the intentions of the British government respecting this claim of a right to change the law of nations in order to accommodate it to their treaty stipulations, and its practical consequence—a claim to enter and search our vessels at all times and in all places. This preliminary proceeding would be worthy of the gravity of the circumstances, and equally honorable to both governments. It seems to me it is due to us. I allude to it in this connection because the subject now necessarily presents itself to the French government, and because I feel confident that they are not prepared to support the pretensions of Great Britain.

We have already given one memorable example of moderation to the world in the rejection of a unanimous application from a neighboring people for admission into our confederacy; and this, too, of a territory among the most fertile and valuable upon the face of the earth, and destined to become our rival in the production of some of our richest staple articles. When accused of ambition, we may point to this proof of self-denial, and challenge an equal instance of its exercise. It is a fact worth volumes of professions of disinterestedness, and of disclaimers of all desire of self-aggrandizement.

It is not to be disguised that the quintuple treaty for the suppression of the slave trade was intended to act upon the United States by its moral force. As to France and England, their co-operation in the necessary measures for the abolition of that traffic was already secured by the treaties of 1831 and 1833; and as to Prussia, Russia, and Austria, I suppose neither of them ever had, or ever will have, a vessel engaged in that commerce. But it was hoped, certainly by one of the parties, that this great combination would either induce the United States to follow their example, and submit themselves to the measures indicated, or that it would lead to the establishment

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of some new principles of maritime law without them. But the subject is now so well understood that we have little to fear from this great combination, so long sought and so highly applauded. Its moral force, as the "Journal des Debats" justly observes, is gone. The discussion in the Chamber of Deputies, and the almost unanimous condemnation of the treaty, will have indicated to you the true state of feeling here, and you will not fail to appreciate the importance of the emphatic declaration of Mr. Guizot, during the debates, that the *Americans* were right, and that France, in the same circumstances, would do the same thing. The value of this testimonial to the justice of our course, made by such a statesman, in the face of Europe, can hardly be overrated.

Our true policy is to discourage all great combinations having for their object the regulation of maritime principles and police. European confederations for the regulation of European questions do not come within the sphere of our policy, as they touch neither our rights nor our interests. But when these powers extend their care and their jurisdiction over the ocean, I think the time has arrived for us to make ourselves heard. No nation is more interested than we are in the freedom of commerce, and we do not advance a single pretension which can give just cause of umbrage to any other country. If, indeed, a general congress of nations could be assembled, where all might be represented, the weak as well as the strong, then we might fairly take our place there and recognize its decisions as obligatory. But this is a measure so doubtful in itself, as well as in its consequences, that it is our interest, as it is the interest of all people who do not conceal any projects of aggrandizement in a professed desire to meliorate the maritime code of nations, to adhere to that code as they find it. This adherence to the established state of things is certainly not inconsistent with any arrangement which two nations may be disposed to make for a single purpose and for a limited time, to which they may be impelled by considerations of general benevolence. Certainly, if Great Britain and the United States choose to restrain their citizens from any traffic condemned by moral considerations, and to regulate their joint action upon the subject, they may do so without subjecting themselves to any imputations of interested or ambitious motives. Each must judge for itself whether such a combined movement is in accordance with its policy or with the nature of its institutions. Both may agree to keep squadrons upon the coast of Africa to suppress the slave trade, and upon the coast of China to suppress the opium trade; branches of commerce destructive of human life and happiness—the latter of which has the advantage of being prohibited by the government of China, and the

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disadvantage, if we can credit but a small part of the statements of that government, of being far more injurious in its operation than the former. But these mutual agreements, dictated by the most charitable motives, would act merely upon the citizens of the respective countries executing them, without overawing others by their imposing form, and without leading to the establishment of any new principle of maritime law.

Nothing can explain to us more clearly the danger of these great combinations, if it does not reveal the object of one or more of the parties in their establishment, than the principle, so frankly developed by Lord Aberdeen, that this "happy concurrence" creates new duties and obligations, before whose *justice and necessity* the law of nations gives way, and to which the interests and independence of nations are sacrificed. I was, therefore, much pleased to read, in the message of the President of the United States to Congress at the commencement of the present session, his emphatic declaration that the United States would not submit to any such pretension. The powers of Europe, strong or weak, must understand, if necessary, that our country, in taking her place in the family of nations, took it with the same rights as the greatest of them, and there will maintain it unmoved by any confederation which may be formed, and wholly without the sphere of its operations.

The quintuple treaty has not yet been ratified by France, nor will it be, I think, without some essential alterations. It is understood that the English government are much dissatisfied at this determination. The queen's speech, however, at the opening of the session, and Sir Robert Peel's remarks last week, in answer to a question of Lord Palmerston, seem to take for granted the French ratification. But, certainly, when the British premier made those remarks, he knew the discussion in the Chamber of Deputies and the state of public opinion here, and he ought to have known that a constitutional ministry would hesitate before they would incur the responsibility of such an act.

I observe that Lord Palmerston, in the remarks prefatory to his question, dwells upon the *disinterestedness* of his country and of the other parties to this treaty. This is the old topic of eulogy for England, as its reverse is intended to be of reproach for us. But its day has gone by. Europe fully understands the subject; and in public as in private life, it is not the most disinterested who are always avowing the purity of their intentions. One would think there were objects of misery enough at home to occupy the attention of any English statesman, without that excess of philanthropy which would tilt a spear at every nation, and light up the flames of a general war, in order to ac-

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complish its own charitable views in its own exclusive way, almost at the end of the world. It brings forcibly to recollection one of the vagaries of Rousseau, that there are people who love those who are placed at the extremities of the earth, in order to excuse themselves for not loving their own neighbors.

In all that precedes, I believe, there is not a word which, if need be, would not be re-echoed by every American citizen in Paris. We are here in the midst of stirring circumstances, and can form a safe judgment of the dangers which menace us. If England pushes her purpose into action, we shall have a severe struggle to encounter; and the sooner and the more vigorously we prepare for it, the better. If she does not, we shall gain by our exhibition of firmness; and the very state of preparations may lead her to recede. But permit me to press upon you the necessity of instant and extensive arrangements for offensive and defensive war. All other questions, personal, local, and political, should give way before this paramount duty. England has fearful means of aggression. No man can yet tell the effect which the use of steam is to produce upon great warlike operations; and, with her accustomed sagacity, she has accumulated a large force of steam-vessels. A hostile squadron might at any time carry to the United States the first news of war. And it would not be a war like the last one, conducted in many cases by incompetent officers, and feebly prosecuted; but she would put forth her utmost strength, and she would be felt, and ought to be met at every assailable point. I can not but hope that the excellent suggestions of the Secretaries of War and of the Navy respecting national defense may find general support.

You may naturally think that this is not a very diplomatic dispatch. It is not so, certainly, so far as diplomacy consists in mystery, either of thought or expression. I have felt strongly, and I have attempted to speak plainly. I do not belong to the school of that well-known French statesman who said that language was given to conceal thoughts. If necessary, I must claim your indulgence for my candor in consideration of my motives. I see the difficult position of my country, and most anxious am I that it should be seen and appreciated at home. That done, I have no fear for the result. If the sentiments I have expressed are not those of the government and people of my country, then I have lived a stirring life, and mixed with my countrymen in every situation, without having learned the American character.

You will perceive that in my letter to M Guizot I have taken upon myself the responsibility of my interposition. Your course is perfectly free to avow or disavow my conduct. The President will decide as the public interest requires. I do not

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shut my eyes to the gravity of the circumstances in which I am placed. In the unforeseen emergency which presents itself, I have pursued the course that appeared to me to be dictated by the honor and interest of our country, and I have the satisfaction to believe that my measures will not be wholly without beneficial results. It is now for the government to judge what is its own duty, and to determine whether my conduct shall be approved or disapproved.

I am, &c., LEWIS CASS.

Hon. DANIEL WEBSTER, *Secretary of State, Washington.*

[INCLOSURE.]

LEGATION OF THE UNITED STATES, *Paris, February* 13, 1842.

SIR,—The recent signature of a treaty, having for its object the suppression of the African slave trade, by five of the powers of Europe, and to which France is a party, is a fact of such general notoriety that it may be assumed as the basis of any diplomatic representations which the subject may fairly require.

The United States, being no party to this treaty, have no right to inquire into the circumstances which have led to it, nor into the measures it proposes to adopt, except so far as they have reason to believe that their rights may be involved in the course of its execution. Their own desire to put a stop to this traffic is every where known, as well as the early and continued efforts they have adopted to prevent their citizens from prosecuting it. They have been invited by the government of Great Britain to become a party to the treaty, which should regulate the action of the combined governments upon the subject. But, for reasons satisfactory to themselves, and I believe satisfactory to the world, they have declined this united action, and have chosen to pursue their own measures, and to act upon their own citizens only, without subjecting these to any kind of foreign jurisdiction.

In a communication from Lord Palmerston, her Britannic majesty's principal Secretary of State for Foreign Affairs, to Mr. Stevenson, the American minister at London, dated the 27th of August, 1841, Lord Palmerston claims a right for the British cruisers, and avows the intention of his government to exercise it, to search American vessels at sea in time of peace, with a view to ascertain their national character. He adds, that "this examination of papers of merchantmen suspected of being engaged in the slave trade, even though they hoist a United States flag, is a proceeding which it is absolutely necessary that British cruisers employed in the suppression of the slave trade should continue to practice," &c., &c.

In a communication from the successor of Lord Aberdeen to Mr. Stevenson, dated October 13, 1841, the views and determ-

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ination announced in the first are confirmed; and Lord Aberdeen thus states the ground upon which rests this pretension to search American vessels in time of peace: "But the undersigned must observe, that the present happy concurrence of the states of Christendom in this great object (the suppression of the slave trade) not merely justifies, but renders indispensable, the right now claimed and exercised by the British government;" that is to say, the right of entering and examining American vessels, to ascertain their nationality.

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It is no part of my duty to offer any comments upon this pretension, nor upon the reasons advanced in support of it; and if it were, I should find the duty far better performed for me than I could perform it for myself, in the annual message of the [President of the] United States to Congress of December 7, 1841. In that document will be found the views of the American government upon this subject; and it is there emphatically declared that, "however desirous the United States may be for the suppression of the slave trade, they can not consent to interpolations into the maritime code at the mere will and pleasure of other governments. We deny the right of any such interpolation to any one or all the nations of the earth, without our consent. We claim to have a voice in all amendments or alterations of that code; and when we are given to understand, as in this instance, by a foreign government that its treaties with other nations can not be executed without the establishment and enforcement of new principles of maritime police, to be applied without our consent, we must employ language neither of equivocal import nor susceptible of misconstruction."

You will perceive, sir, by these extracts, that the British government has advanced a pretension which it asserts to be indispensable to the execution of its treaties for the suppression of the slave trade, and to which the President of the United States has declared that the American government will not submit. This claim of search, it will be observed, arising, as is asserted, out of existing obligations, has relation to the isolated treaties for the abolition of this traffic which were in force at the date of the communications of Lord Palmerston and of Lord Aberdeen. It is now known that the combined treaty upon this subject is more extensive in its operations, and more minute in some of the details of its execution, than the separate treaties with France which preceded it, and equally indefinite in the duration of its obligations. Of course, measures which were not only "justifiable, but indispensable" for the execution of the latter, will find equal justice and necessity in the obligations of the former.

With this previous declaration made by one of the parties to this quintuple treaty concerning its operations, the Ameri-

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can government can not shut their eyes to their true position. The moral effect which such a union of five great powers, two of which are eminently maritime, but three of which have, perhaps, never had a vessel engaged in that traffic, is calculated to produce upon the United States, and upon other nations who, like them, may be indisposed to these combined movements, though it may be regretted, yet furnishes no just cause of complaint. But the subject assumes another aspect when they are told by one of the parties that their vessels are to be forcibly entered and examined, in order to carry into effect these stipulations. Certainly the American government does not believe that the high powers, contracting parties to this treaty, have any wish to compel the United States, by force, to adopt their measures to its provisions, or to adopt its stipulations. They have too much confidence in their sense of justice to fear any such result; and they will see with pleasure the prompt disavowal made by yourself, sir, in the name of your country, at the tribune of the Chamber of Deputies, of any intentions of this nature. But were it otherwise, and were it possible they might be deceived in this confident expectation, that would not alter in one tittle their course of action; their duty would be the same, and the same would be their determination to fulfill it. They would prepare themselves with apprehension, indeed, but without dismay—with regret, but with firmness—for one of those desperate struggles which have sometimes occurred in the history of the world, but where a just cause and the favor of Providence have given strength to comparative weakness, and enabled it to break down the pride of power.

But I have already said that the United States do not fear that any such united attempt will be made upon their independence. What, however, they may reasonably fear, and what they do fear, is, that in the execution of this treaty measures will be taken which they must resist. How far the act of one of the parties putting its construction upon its own duties, and upon the obligations of its co-contractors, may involve these in any unlooked-for consequences, either by the adoption of similar measures or by their rejection, I do not presume to judge. Certain it is, however, that if the fact, and the principle advanced by Lord Aberdeen, are correct, that these treaties for the abolition of the slave trade can not be executed without forcibly boarding American ships at sea in time of peace, and that the obligations created by them confer not only the right thus to violate the American flag, but make this measure a duty, then it is also the duty of France to pursue the same course. Should she put this construction upon her obligations, it is obvious the United States must do to her as they

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will do to England if she persists in this attack upon their independence. Should she not, it does not become me to investigate the nature of her position with respect to one of her associates, whose opinion respecting their relative duties would be so widely different from her own. But I may express the hope that the government of his majesty, before ratifying this treaty, will examine maturely the pretensions asserted by one of the parties, and see how these can be reconciled not only with the honor and interest of the United States, but with the received principles of the great maritime code of nations. I may make this appeal with the more confidence from the relations subsisting between France and the United States, from a community of interest in the liberty of the seas, from a community of opinion respecting the principles which guard it, and from a community in danger should it ever be menaced by the ambition of any maritime power.

It appears to me, sir, that in asking the attention of his majesty's government to the subject of the quintuple treaty, with a view to its reconsideration, I am requesting nothing on the part of the United States inconsistent with the duties of France to other powers. If, during the course of the discussions upon this treaty, preparatory to the arrangement of its provisions, England had asserted to the other parties the pretension she now asserts to the United States, as a necessary consequence of its obligations, I can not be wrong in presuming that France would not have signed it without guarding against this impending difficulty. The views of England are now disclosed to you, but fortunately before its ratification. And this change of circumstances may well justify the French government in interposing such a remedy as it may think is demanded by the grave interests involved in this question.

As to the treaties of 1831 and 1833, between France and Great Britain, for the suppression of the slave trade, I do not consider it my duty to advert to their stipulations. Their obligations upon the contracting parties, whatever these may be, are now complete; and it is for my government alone to determine what measures the United States ought to take to avert the consequences with which they are threatened by the construction which one of the parties has given to these instruments.

I have the honor to transmit, herewith, a copy of the Message of the President of the United States to Congress, in December last, and of the annual documents which accompanied it. Among the latter will be found the correspondence between the British Secretaries of State and Mr. Stevenson upon the subject herein referred to. From these you will learn the respective views of the American and British governments.

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It is proper for me to add that this communication has been made without any instructions from the United States. I have considered this case as one in which an American representative to a foreign power should act without awaiting the orders of his government. I have presumed, in the views I have submitted to you, that I express the feelings of the American government and people. If in this I have deceived myself, the responsibility will be mine. As soon as I can receive dispatches from the United States in answer to my communications, I shall be enabled to declare to you either that my conduct has been approved by the President, or that my mission is terminated.

I avail myself, &c. LEWIS CASS.

His Excellency M. GUIZOT, *Minister of Foreign Affairs.*

Mr. Webster to Mr. Cass.

DEPARTMENT OF STATE, *Washington, April* 5, 1842.

SIR,—By the arrival of the steam-packet at Boston, on the 27th day of last month, I had the honor to receive your several dispatches down to the 26th of February. That vessel had been so long delayed on the passage to America that, after the receipt here of the communications brought by her, there was not time to prepare answers in season to reach Boston before the time fixed for her departure on her return. The most I was able to do was to write a short note to Mr. Everett, to signify that the mail from London had come safe to hand.

The President has been closely attentive to recent occurrences in Europe connected with the treaty of the five powers, of which we received a copy soon after its signature in December. He has witnessed with especial interest the sentiments to which that treaty appears to have given rise in France, as manifested by the debates in the Chambers and the publication of the Parisian press; and he is now officially informed of the course which you felt it to be your duty to take, by the receipt of a copy of the letter addressed by you to M. Guizot on the 13th of February.

When the President entered upon the duties of his present office in April of last year, a correspondence, as you know, had been long pending, and was still pending, in London, between the minister of the United States and her Britannic majesty's Secretary of State for Foreign Affairs, respecting certain seizures and detentions of American vessels on the coast of Africa by armed British cruisers, and, generally, respecting the visitation and search of American vessels by such cruisers in those seas. A general approbation of Mr. Stevenson's note to the British minister in regard to this subject was soon after communicated to that gentleman, by the President's order, from this department. The state of things in England in the early

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part of last summer did not appear to favor a very active continuance or prosecution of this correspondence; and, as Mr. Stevenson had already received permission to return home, no new instructions were addressed to him.

Circumstances occurred, as you are aware, which delayed Mr. Everett's arrival at the post assigned to him as minister to London; and, in the mean time, in the latter part of August the correspondence between Lord Palmerston and Mr. Stevenson was, somewhat unexpectedly, resumed afresh, not only on the subject of the African seizures, but on other subjects.

Mr. Everett arrived in London only in the latter part of November; and, in fact, was not presented to the queen until the 16th day of December. While we were waiting to hear of his appearance at his post, the session of Congress was fast approaching; and, under these circumstances, the President felt it to be his duty to announce, publicly and solemnly, the principles by which the government would be conducted in regard to the visitation and search of ships at sea. As one of the most considerable, commercial, and maritime states of the world, as interested in whatever may in any degree endanger or threaten the common independence of nations upon the seas, it was fit that this government should avow the sentiments which it has heretofore always maintained, and from which it can not under any circumstances depart. You are quite too well acquainted with the language of the message, on which your letter is bottomed, to need its recital here. It expresses what we consider the true American doctrine, and that which will, therefore, govern us in all future negotiations on the subject.

While instructions for Mr. Everett were in the course of preparation, signifying to him in what manner it might be practicable to preserve the peace of the country consistently with the principles of the message, and yet so as to enable the government to fulfill all its duties, and meet its own wishes and the wishes of the people of the United States, in regard to the suppression of the African slave trade, it was announced that the English government had appointed Lord Ashburton as special minister to this country, fully authorized to treat of and definitely settle all matters in difference between the two countries. Of course, no instructions were forwarded to Mr. Everett respecting any of those matters. You perceive, then, that up to the present moment we rest upon the sentiments of the message: beyond the fair scope and purport of that document we are not committed on the one hand nor on the other. We reserve to ourselves the undiminished right to receive or to offer propositions on the delicate subjects embraced in the treaty of the five powers, to negotiate thereupon as we may be advised, never departing from our principles, but desirous, while we

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carefully maintain all our rights to the fullest extent, of fulfilling our duties also as one of the maritime states of the world.

The President considers your letter to M. Guizot to have been founded, as it purports, upon the message delivered by him at the opening of the present session of Congress; as intending to give assurance to the French government that the principles of that message would be adhered to, and that the government of the United States would regret to see other nations, especially France, an old ally of the United States and a distinguished champion of the liberty of the seas, agree to any arrangement between other states which might, in its influences, produce effects unfavorable to this country, and to which arrangement, therefore, this country itself might not be able to accede.

The President directs me to say that he approves your letter, and warmly commends the motives which animated you in presenting it. The whole subject is now before us here, or will be shortly, as Lord Ashburton arrived last evening; and, without intending to intimate at present what modes of settling this point of difference with England will be proposed, you may receive two propositions as certain:

1st. That, in the absence of treaty stipulations, the United States will maintain the immunity of merchant vessels on the seas, to the fullest extent which the law of nations authorizes.

2d. That if the government of the United States, animated by a sincere desire to put an end to the African slave trade, shall be induced to enter into treaty stipulations for that purpose with any foreign power, those stipulations will be such as shall be strictly limited to their true and single object, such as shall not be embarrassing to innocent commerce, and such, especially, as shall neither imply any inequality, nor can tend in any way to establish such inequality, in their practical operations.

You are requested to communicate these sentiments to M. Guizot, at the same time that you signify to him the President's approbation of your letter; and are requested to add an expression of the sincere pleasure which it gives the President to see the constant sensibility of the French government to the maintenance of the great principles of national equality upon the ocean. Truly sympathizing with that government in abhorrence of the African slave trade, he appreciates the high motives and the comprehensive views of the true, permanent interest of mankind, which induces it to act with great caution, in giving its sanction to a measure susceptible of interpretations, or of modes of execution, which might be in opposition to the independence of nations and the freedom of the seas.

I am, &c., DANIEL WEBSTER.

LEWIS CASS, Esq., &c., &c., &c.

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Mr. Cass to Mr. Webster.

LEGATION OF THE UNITED STATES, *Paris, April* 30, 1842.

SIR,—The quintuple treaty, purporting to be for the suppression of the slave trade, has not been ratified by France, and the manifestations of public opinion against it are so numerous and decisive that it seems to be too clearly the part of true wisdom to yield to them, to render it probable that that measure will ever be adopted.

M. Guizot has not answered my letter of the 13th of February, and I have no expectation he will do so till the course of our government upon the subject is known here. I have yet received nothing from you upon the subject, but I am expecting every day your instructions. If the President should disapprove the step I have taken, I could no longer remain here with honor to myself or with advantage to our country.

I am, &c., LEWIS CASS.

HON. DANIEL WEBSTER, *Secretary of State, Washington.*

Mr. Cass to Mr. Webster.

LEGATION OF THE UNITED STATES, *Paris, May* 17, 1842.

SIR,—I have the honor to acknowledge the receipt of your dispatch of the 5th of April, and I am happy to find that the course which I considered it necessary to take in relation to the ratification, by France, of the quintuple treaty for the suppression of the slave trade, has met the approbation of the President.

Immediately on the receipt of your letter, I sought an interview with M. Guizot, and, after some conversation with him, I placed the letter in his hands. I thought this mode of procedure far better than to trust myself to make a verbal statement, to be afterward put in the form of an official communication to him. As you instructed me to make known the sentiments of the President upon the whole matter, I was sure I could not perform this task as well as I found it performed for me; and this view was not checked by any considerations arising out of the nature of the dispatch. There was nothing in it which might not be seen by all the world.

M. Guizot was touched by the frankness of the proceeding, and testified his gratification after the perusal of the letter. He then asked for a copy of it, which I did not hesitate to promise him; and since then I have sent it; and have thus, in my opinion, in the best mode in my power, carried into effect your instructions.

M. Guizot said nothing on the subject of an answer. If the treaty is not ratified, as I have now the confident expecta-

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tion that it will not be, it is possible he may consider that the occasion for an answer has passed by.

I am, &c., LEWIS CASS.

Hon. DANIEL WEBSTER, *Secretary of State, Washington.*

Mr. Cass to Mr. Webster.

LEGATION OF THE UNITED STATES, *Paris, May* 26, 1842.

SIR,—Since my dispatch of the 17th instant, the question of the ratification of the quintuple treaty has been discussed in the Chamber of Peers and in the Chamber of Deputies, and the sentiments expressed were unanimously against the measure. It is now well understood that the subject is at rest in France, and that no ministry will venture to recommend ratification. Efforts will no doubt now be made, and I think eventually with success, for the abrogation of the treaties of 1831 and 1833.

The question of the budget is a subject which, by the usage of the French Chambers, allows great latitude of discussion. Connected with this matter, the commercial relations between France and the United States have just been warmly debated. I send you the *Moniteur*, which contains an account of the proceedings. It is well worth your examination, and I think ought to be translated and published for the information of the country. It is lamentable to find such erroneous notions prevailing in such a high place respecting the true character of the trade between France and the United States. You will see that the speakers complain of two grievances: first, of the navigation; and, second, of the duties proposed to be levied on foreign productions imported into the United States. As to the former, it is, as you know, upon a footing of perfect equality; and as to the latter, if it were, as it is not, a just subject of interference for a foreign government, France is one of the last countries which has any just right to complain. Her prohibitive system, commenced so long ago as Colbert, has been continued, with little relaxation, to this day. You can not fail to be struck by the views advanced by most of the speakers, and the gravity with which they urge reprisals against the United States. But I assure you that these sentiments are general in France; and such are the exclusive views taken of these subjects by the press, that it is hopeless to expect to change public opinion. We have nothing to do but to pursue our own measures firmly, leaving to other governments to meet them as they think proper.

As soon as I read the debate in the *Moniteur*, I called upon M. Guizot to converse with him upon the subject. I found him very reasonable, though not fully acquainted with the details of the matter. He says, however, that he is looking into it, and that nothing will be hastily done. It is my decided opinion that there is no efficient remedy for the present state

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of things, but by a commercial treaty which shall regulate our intercourse with France. I recommend that measures with that view be taken without delay; and I think the negotiations can be better carried on at Washington than here. If full powers and general instructions are given to the French minister there, you may calculate with a reasonable probability upon a successful termination of your efforts. He would understand the true state of things better than they are or can be understood here. The government has too many important subjects on hand, to be able to devote the proper time for the acquisition of all the necessary facts which belong to this subject. I am, &c., LEWIS CASS.

Hon. DANIEL WEBSTER, *Secretary of State, Washington.*

Mr. Cass to Mr. Webster.

LEGATION OF THE UNITED STATES, *Paris, May* 31, 1842.

SIR,—I have the honor to transmit herewith the copy of a letter which I have received from the Minister of Foreign Affairs, in answer to my letter to him of the 13th of February, concerning the quintuple treaty.

I have merely said, in acknowledging the receipt of this letter, that I should transmit it to my government for its information.

I am, &c., LEWIS CASS.

Hon. DANIEL WEBSTER, *Secretary of State, Washington.*

[INCLOSURE.—TRANSLATION.]

PARIS, *May* 26, 1842.

GENERAL,—I received in due time the letter with which you honored me on the 13th of February, respecting the treaty signed on the 26th of December, between the plenipotentiaries of France, Austria, Great Britain, Prussia, and Russia, with the object of attaining a more efficient repression of the negro slave trade. You therein expressed your desire that the king's government should not ratify this treaty; and you at the same time stated that you were about to inform your government of a measure which you had thought proper to take, without authorization, upon your own responsibility; and that, as soon as you should have received the approval or the disavowel of your government, you would communicate it to me.

I have just received with your letter of the 3d of this month, a copy of that which Mr. Webster has written to you, announcing the approval by the President of your dispatch of the 13th of February; and as that dispatch has thus acquired an official character, which it did not before possess, I conceive that I should no longer defer my answer, which would have been hitherto premature.

You expressed to me, sir, your apprehension that the treaty

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of December 20 might constitute, on the part of the contracting parties, an engagement to create a new principle of international law, whereby the vessels even of those powers which have not participated in the arrangement should be subjected to the right of search, as established in its stipulations. As the act in question has not been ratified by the king's government, and consequently does not exist, so far as regards France, at this moment, I might abstain from entering into any explanations on the subject. But the amicable relations subsisting between France and the United States make it my duty to come forward and prevent all misunderstanding, by frank and complete explanations; moreover, we have always been actuated in this matter by intentions too correct and honest (droites et loyales) for us not to embrace with eagerness an opportunity to exhibit them to the world.

It is not my part to examine the value of the deductions, with regard to the private views of the cabinet of London, which you draw from certain passages of the dispatches written by Lord Palmerston and Lord Aberdeen to Mr. Stevenson, but I shall not hesitate to say what was the idea of the king's government upon the serious question which you raise. The treaty of December 20, 1841, whatever hereafter might be its destiny, was founded upon no other principles than the conventions of 1831 and 1833. The stipulations of these conventions only engaged France and England; the treaty of December 20 extends them to Austria, Prussia, and Russia, with some changes more or less important, but not altering their nature. In order that the extraordinary intention of imposing upon other states the obligation to submit to them should be deduced, this intention, which is in no-wise indicated in the act of December 20, might be the result of the anterior conventions. Never have we, never could we have understood them in such a sense.

I have the less hesitation in here giving the formal, and, in my opinion, entirely superfluous assurance, that the king's government, on its part, places the fullest confidence in the firm resolution so often proclaimed by the Federal government, to aid, by its most sincere endeavors, in the definitive abolition of the trade. The dispatch of Mr. Webster, which you do me the honor to communicate to me, is of such a nature as to increase this confidence. It seems to show, in fact, that the cabinet of Washington foresees the probability of concluding, with the states which have adhered to the right of reciprocal search for the suppression of the slave trade, arrangements proper to attain the end which they propose.

We should attach the more value to this concurrence of views from the circumstance that, while it would hasten the entire destruction of the slave trade, it would have the effect, by

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placing all governments in the same situation as regards the measures adopted for the suppression, to give to the maritime laws, and the commercial activity of all nations, guarantees of security which it would be difficult to obtain, amid the complications and causes of collision which would necessarily result from opposition, or diversity of the systems. However it may be, nevertheless, should this hope not be realized—should the United States persist in their isolation—we have the conviction that they will regard it as a sacred duty to prevent that isolation from affording to the prosecutors of an infamous speculation too many chances of impunity.

Accept, general, the assurance, &c., GUIZOT.

General CASS, *Envoy Extraordinary*, &c.

Mr. Webster to Mr. Cass.

DEPARTMENT OF STATE, *Washington, August* 29, 1842.

SIR,—You will see by the inclosed the result of the negotiations lately had in this city between this department and Lord Ashburton. The treaty has been ratified by the President and Senate.

In communicating to you this treaty, I am directed by the President to draw your particular attention to those articles which relate to the suppression of the African slave trade.

After full and anxious consideration of this very delicate subject, the government of the United has come to the conclusion which you will see expressed in the President's Message to the Senate accompanying the treaty.

Without intending or desiring to influence the policy of other governments on this important subject, this government has reflected on what was due to its own character and position, as the leading maritime power on the American continent, left free to make choice such of means for the fulfillment of its duties as it should deem best suited to its dignity. The result of its reflections has been, that it does not concur in measures which, for whatever benevolent purpose they may be adopted, or with whatever care and moderation they may be exercised, have yet a tendency to place the police of the seas in the hands of a single power. It chooses rather to follow its own laws with its own sanction, and to carry them into execution by its own authority. Disposed to act in the spirit of the most cordial concurrence with other nations for the suppression of the African slave trade, that great reproach of our times, it deems it to be right, nevertheless, that this action, though concurrent, should be independent; and it believes that, from this independence, it will derive a greater degree of efficiency.

You will perceive, however, that, in the opinion of this government, cruising against slave dealers on the coast of Africa

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is not all which is necessary to be done, in order to put an end to the traffic. There are markets for slaves, or the unhappy natives of Africa would not be seized, chained, and carried over the ocean into slavery. These markets ought to be shut. And, in the treaty now communicated to you, the high contracting parties have stipulated "that they will unite, in all becoming representations and remonstrances, with any and all powers within whose dominions such markets are allowed to exist; and that they will urge upon all such powers the propriety and duty of closing such markets effectually at once and forever."

You are furnished, then, with the American policy in regard to this interesting subject. First, independent but cordially concurrent efforts of maritime states to suppress, as far as possible, the trade on the coast, by means of competent and well appointed squadrons, to watch the shores and scour the neighboring seas. Secondly, concurrent, becoming remonstrance with all governments who tolerate within their territories markets for the purchase of African negroes. There is much reason to believe that if other states, professing equal hostility to this nefarious traffic, would give their own powerful concurrence and co-operation to these remonstrances, the general effect would be satisfactory, and that the cupidity and crimes of individuals would at length cease to find both their temptation and their reward in the bosom of Christian states, and in the permission of Christian governments.

It will still remain for each government to revise, execute, and make more effectual its own municipal laws against its subjects or citizens who shall be concerned in, or in any way give aid or countenance to others concerned in this traffic.

You are at liberty to make the contents of this dispatch known to the French government.

I have, &c., DANIEL WEBSTER.

LEWIS CASS, Esq., &c., &c., &c.

Mr. Cass to Mr. Webster.

LEGATION OF THE UNITED STATES, *Paris, September* 17, 1842.

SIR,—The mail by the steam-packet which left Boston on the 1st instant has just arrived, and has brought intelligence of the ratification of the treaties recently concluded with Great Britain. All apprehensions, therefore, of any immediate difficulties with that country are at an end, and I do not see that any public interest demands my further residence in Europe. I can no longer be useful here, and the state of my private affairs requires my presence at home. Under these circumstances, I beg you to submit to the President my wish for permission to retire from this mission, and to return to the United

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States without delay. In the hope that there will be no objection to this measure, I shall proceed to make my arrangements to leave here about the 13th of November, so as to embark in the steamer of the 19th of November. I can not delay my departure any longer, as I am anxious to finish my voyage before the winter weather.

I have, therefore, to pray you to favor me with an answer by the return steam-packet, inclosing my letters of recall, and authorizing me to transfer the legation to the secretary, Mr. Ledyard, as chargé d'affaires, till a minister can be sent out. He is every way competent to discharge the duties.

I am, &c., LEWIS CASS.

Hon. DANIEL WEBSTER, *Secretary of State, Washington.*

Mr. Cass to Mr. Webster.

LEGATION OF THE UNITED STATES, *Paris, October* 3, 1842.

SIR,—The last packet brought me your letter of August 29, announcing the conclusion of a treaty with Great Britain, and accompanied by a copy of it, and of the correspondence between the ministers charged with the negotiations, and directing me to make known to M. Guizot the sentiments of the American government upon that part of the treaty which provides for the co-operation of the United States in the efforts making to suppress the African slave trade. I thought I should best fulfill your intentions by communicating a copy, *in extenso*, of your letter. This I accordingly did yesterday. I trust I shall be able, before my departure, to transmit to you the acknowledgment of its receipt by M. Guizot.

In executing this duty, I felt too well what was due to my government and country to intimate any regret to a foreign power that some declaration had not preceded the treaty, or some stipulation accompanied it, by which the extraordinary pretension of Great Britain to search our ships at all times and in all places, first put forth to the world by Lord Palmerston on the 27th of August, 1841, and on the 13th of October following again peremptorily claimed as a right by Lord Aberdeen, would have been abrogated, as equally incompatible with the laws of nations and with the independence of the United States. I confined myself, therefore, to a simple communication of your letter.

But this reserve ceases when I address my own government; and, connected as I feel my official conduct and reputation with this question of the right of search, I am sure I shall find an excuse for what might otherwise be considered presumption, if, as one of the last acts of my official career, I submit to you, and through you to the President, the peculiar circumstances in

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which I am placed by the conclusion of this treaty, and by the communication of your letter to M. Guizot.

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Before proceeding further, however, permit me to remark, that no one rejoices more sincerely than I do at the termination of our difficulties with Great Britain, *so far as they are terminated.* That country and ours have so many moral and material interests involved in their intercourse, that their respective governments and inhabitants may well feel more than ordinary solicitude for the preservation of peace between these two great nations. Our past history, however, will be unprofitable if it do not teach us that unjust pretensions, affecting our rights and honor, are best met by being promptly repelled when first urged, and by being received in a spirit of resistance worthy the character of our people and of the great trust confided to us as the depositaries of the freest system of government which the world has yet witnessed.

I had the honor, in my letter of the 17th ultimo, to solicit permission to return to the United States. That letter was written the day a copy of the treaty reached Paris; and the remark which I then made to you, that "I could no longer be useful here," has been confirmed by subsequent reflection, and by the receipt of your letter and of the correspondence accompanying it. I feel that I could no longer remain here honorably for myself or advantageously for our country.

In my letter to you of the 15th of February last, transmitting a copy of my protest against the ratification of the quintuple treaty for the suppression of the African slave trade, I took the liberty of suggesting the propriety of demanding from Lord Ashburton, previously to entering into any negotiation, a distinct renunciation of this claim to search our vessels. I thought then, as I do now, that this course was demanded by a just self-respect, and would be supported by that tribunal of public opinion which sustains our government when right, and corrects it when wrong. The pretension itself was one of the most flagrant outrages which could be aimed at an independent nation; and the mode of its enunciation was as coolly contemptuous as diplomatic ingenuity could suggest. We were told, that to the doctrine that American vessels were free from the search of foreign cruisers in time of peace, "the British government never could or would subscribe;" and we were told, too, there was reason to expect that the United States would themselves become converts to the same opinion; and this expectation was founded on the hope that "they would cease to confound two things which are in their nature entirely different, and would look to things, and not to words." And the very concluding paragraph of the British correspondence tells us, in effect, that we may take whatever course we please,

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but that England will adhere to this pretension to board our vessels when and where her cruisers may find them. A portion of this paragraph is equally significant and unceremonious. "It is for the American government," says Lord Aberdeen, "alone to determine what may be due to a just regard for their national dignity and national independence." I doubt if, in the wide range of modern diplomacy, a more obnoxious claim has been urged in a more obnoxious manner.

This claim, thus asserted and supported, was promptly met and firmly repelled by the President in his message at the commencement of the last session of Congress; and in your letter to me, approving the course I had adopted in relation to the question of the ratification by France of the quintuple treaty, you consider the principles of that message as the established policy of the government. Under these circumstances of the assertion and denial of this new claim of maritime police, the eyes of Europe were upon these two great naval powers, one of which had advanced a pretension, and avowed her determination to enforce it, which might at any moment bring them into collision. So far our national dignity was uncompromited.

But England then urged the United States to enter into a conventional arrangement, by which we might be pledged to concur with her in measures for the suppression of the slave trade. Till then we had executed our own laws in our own way. But, yielding to this application, and departing from our former principle of avoiding European combinations upon subjects not American, we stipulated, in a solemn treaty, that we would carry into effect our own laws, and fixed the minimum force we would employ for that purpose. Certainly, a laudable desire to terminate this horrible man-stealing and man-selling may well justify us in going further, in changing one of the fundamental principles of our policy, in order to effect this object, than we would go to effect any other. It is so much more a question of feeling than of reasoning, that we can hardly be wrong in yielding to that impulse which leads us to desire to unite our efforts with those of other nations for the protection of the most sacred human rights. But, while making so important a concession to the renewed application of England, it seems to me we might well have said to her, *Before we treat upon this matter, there is a preliminary question connected with it which must be settled. We will do no act which may, by any possibility, appear to be a recognition of your claim to search our vessels. That claim has arisen out of this very subject, or, at any rate, this subject has been the pretext for its assertion; and if we now negotiate upon it, and our concurrence is yielded, you must relinquish, as solemnly as you have announced, this most offensive pretension. If this is not done,*

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by now making a conventional arrangement with you, and leaving you free to take your own course, we shall, in effect, abandon the ground we have assumed, and with it our rights and honor.

In carefully looking at the seventh and eighth articles of the treaty providing for our co-operation in the measures for the suppression of this traffic, I do not see that they change in the slightest degree the pre-existing right claimed by Great Britain to arrest and search our vessels. That claim, as advanced both by Lord Palmerston and Lord Aberdeen, rested on the assumption that the treaties between England and other European powers upon this subject could not be executed without its exercise, and that *the happy concurrence of these powers not only justified this exercise, but rendered it indispensable.* By the recent treaty we are to keep a squadron upon the coast of Africa. We have kept one there for years—during the whole term, indeed, of these efforts to put a stop to this most iniquitous commerce. The effect of the treaty is, therefore, to render it obligatory upon us, by a convention, to do what we have long done voluntarily—to place our municipal laws, in some measure, beyond the reach of Congress, and to increase the strength of the squadron employed on this duty. But if a British cruiser met a vessel bearing the American flag, where there is no American ship of war to examine her, it is obvious that it is quite as *indispensable* and *justifiable* that the cruiser should search this vessel to ascertain her nationality since the conclusion of the treaty as it was before. The mutual rights of the parties are in this respect wholly untouched; their pretensions exist in full force; and what they could do prior to this arrangement, they may do now; for, though they have respectively sanctioned the employment of a force to give effect "to the laws, rights, and obligations of the two countries," yet they have not prohibited the use of any other measure which either party may be disposed to adopt.

It is unnecessary to push these considerations further; and, in carrying them thus far, I have found the task an unpleasant one. Nothing but justice to myself could have induced me to do it. I could not clearly explain my position here without this recapitulation. My protest of the 13th of February distinctly asserted that the United States would resist the pretension of England to search our vessels. I avowed, at the same time, that this was but my personal declaration, liable to be confirmed or disavowed by my government. I now find a treaty has been concluded between Great Britain and the United States, which provides for the co-operation of the latter in efforts to abolish the slave trade, but which contains no renunciation by the former of the extraordinary pretension, resulting, as she said, from the exigencies of these very efforts; and which pre-

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tension I felt it my duty to denounce to the French government. In all this I presume to offer no further judgment than as I am personally affected by the course of the proceedings; and I feel they have placed me in a false position, whence I can escape but by returning home with the least possible delay. I trust, therefore, that the President will have felt no hesitation in granting me the permission which I asked for.

I am, &c., LEWIS CASS.

DANIEL WEBSTER, *Secretary of State, Washington.*

Mr. Webster to Mr. Cass.

DEPARTMENT OF STATE, *Washington, October* 11, 1842.

SIR,—I have to acknowledge the receipt of your dispatch of the 17th of September last, requesting permission to return home.

I have submitted the dispatch to the President, and am by him directed to say that, although he much regrets that your own wishes should, at this time, terminate your mission to the court of France, where for a long period you have rendered your country distinguished service, in all instances to its honor and to the satisfaction of the government, and where you occupy so favorable a position, from the more than ordinary good intelligence which is understood to subsist between you, personally, and the members of the French government, and from the esteem entertained for you by its illustrious head; yet he can not refuse your request to return once more to your home and your country, so that you can pay that attention to your personal and private affairs which your long absence and constant employment in the service of your government may now render most necessary.

I have, sir, to tender you, on behalf of the President, his most cordial good wishes, and am, &c.,

FLETCHER WEBSTER, *Acting Secretary of State.*

LEWIS CASS, Esq., &c., &c., &c.

Mr. Cass to Mr. Webster.

LEGATION OF THE UNITED STATES, *Paris. October* 29, 1842.

SIR,—I have the honor to transmit herewith a copy of the letter of the Minister of Foreign Affairs of the 14th instant, acknowledging the reception of my letter to him of the 2d instant, inclosing a copy of your communication of August 29th, respecting the conclusion of the recent treaty with Great Britain.

I am, &c., LEWIS CASS.

Hon. DANIEL WEBSTER, *Secretary of State, Washington.*

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[INCLOSURE.—TRANSLATION.]

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PARIS, *October* 14, 1842.

GENERAL,—I have received, with the letter which you did me the honor to address to me on the 2d instant, a copy of the dispatch wherein Mr. Webster, the Secretary of State, while communicating to you the result of his negotiations with Lord Ashburton, her Britannic majesty's plenipotentiary, informs you of the views of the Federal government with regard to the repression of the slave trade.

I thank you, sir, for this communication, and I embrace with satisfaction this opportunity to renew to you, &c.,

GUIZOT.

Mr. Webster to Mr. Cass.

DEPARTMENT OF STATE, *Washington, November* 14, 1842.

SIR,—I have the honor to acknowledge the receipt of your dispatch of the 3d of October, brought by the "Great Western," which arrived at New York on the 6th instant.

It is probable you will have embarked for the United States before my communication can now reach you; but as it is thought proper that your letter should be answered, and as circumstances may possibly have occurred to delay your departure, this will be transmitted to Paris in the ordinary way.

Your letter has caused the President considerable concern. Entertaining a lively sense of the respectable and useful manner in which you have discharged, for several years, the duties of an important foreign mission, it occasions him real regret and pain that your last official communication should be of such a character as that he can not give to it his entire and cordial approbation.

It appears to be intended as a sort of protest, a remonstrance, in the form of an official dispatch, against a transaction of the government to which you were not a party, in which you had no agency whatever, and for the results of which you were no way answerable. This would seem an unusual and extraordinary proceeding. In common with every other citizen of the republic, you have an unquestionable right to form opinions upon public transactions, and the conduct of public men; but it will hardly be thought to be among either the duties or the privileges of a minister abroad to make formal remonstrances and protests against proceedings of the various branches of the government at home, upon subjects in relation to which he himself has not been charged with any duty or partaken any responsibility.

The negotiation and conclusion of the Treaty of Washington were in the hands of the President and Senate. They had acted upon this important subject according to their convic-

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tions of duty and of the public interest, and had ratified the treaty. It was a thing done; and although your opinion might be at variance with that of the President and Senate, it is not perceived that you had any cause of complaint, remonstrance, or protest, more than any other citizen who might entertain the same opinion.

In your letter of the 17th of September, requesting your recall, you observe, "The mail by the steam-packet which left Boston the 1st instant has just arrived, and has brought intelligence of the ratification of the treaties recently concluded with Great Britain. All apprehensions, therefore, of any immediate difficulties with that country are at an end, and I do not see that any public interest demands my further residence in Europe. I can no longer be useful here, and the state of my private affairs requires my presence at home. Under these circumstances, I beg you to submit to the President my wish for permission to retire from this mission, and to return to the United States without delay."

As you appeared at that time not to be acquainted with the provisions of the treaty, it was inferred that your desire to return home proceeded from the conviction *that, inasmuch as all apprehensions of immediate differences with Great Britain were at an end*, you would no longer be useful at Paris. Placing this interpretation on your letter, and believing, as you yourself allege, that your long absence abroad rendered it desirable for you to give some attention to your private affairs in this country, the President lost no time in yielding to your request, and, in doing so, signified to you the sentiments of approbation which he entertained for your conduct abroad. You may then well imagine the great astonishment which the declaration contained in your dispatch of the 3d of October, that you could no longer remain in France honorably to yourself or advantageously to the country, and that the proceedings of this government had placed you in a false position, from which you could escape only by returning home, created in his mind.

The President perceives not the slightest foundation for these opinions. He can not see how your usefulness as minister to France should be terminated by the settlement of difficulties and disputes between the United States and Great Britain. You have been charged with no duties connected with the settlement of these questions, or in any way relating to them, beyond the communication to the French government of the President's approbation of your letter of the 13th of February, written without previous instructions from this department. This government is not informed of any other act or proceeding of yours connected with any part of the subject, nor does it know that your official conduct and character have become

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in any other way connected with the question of the right of search; and that letter having been approved, and the French government having been so informed, the President is altogether at a loss to understand how you can regard yourself as placed in a false position. If the character or conduct of any one was to be affected, it could only be the character and conduct of the President himself. The government has done nothing, most assuredly, to place you in a false position. Representing your country at a foreign court, you saw a transaction about to take place between the government to which you were accredited and another power, which you thought might have a prejudicial effect on the interest of your own country. Thinking, as it is to be presumed, that the case was too pressing to wait for instructions, you presented a protest against that transaction, and your government approved your proceeding. This is your only official connection with the whole subject. If after this the President had sanctioned the negotiation of a treaty, and the Senate had ratified it, containing provisions in the highest degree objectionable, however the government might be discredited, your exemption from all blame and censure would have been complete. Having delivered your letter of the 13th of February to the French government, and having received the President's approbation of that proceeding, it is most manifest that you could be in no degree responsible for what should be done afterward, and done by others. The President, therefore, can not conceive what particular or personal interest of yours was affected by the subsequent negotiation here, or how the treaty, the result of that negotiation, should put an end to your usefulness as a public minister at the court of France, or any way affect your official character or conduct.

It is impossible not to see that such a proceeding as you have seen fit to adopt might produce much inconvenience, and even serious prejudice, to the public interests. Your opinion is against the treaty, a treaty concluded and formally ratified; and, to support that opinion, while yet in the service of the government, you put a construction on its provisions such as your own government does not put upon them, such as you must be aware the enlightened public of Europe does not put upon them, and such as England herself has not put upon them as yet, so far as we know.

It may become necessary hereafter to publish your letter, in connection with other correspondence of the mission; and although it is not to be presumed that you looked to such publication, because such a presumption would impute to you a claim to put forth your private opinions upon the conduct of the President and Senate, in a transaction finished and con-

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cluded, through the imposing form of a public dispatch, yet, if published, it can not be foreseen how far England might hereafter rely on your authority for a construction favorable to her own pretensions, and inconsistent with the interest and honor of the United States. It is certain that you would most sedulously desire to avoid any such attitude. You would be slow to express opinions, in a solemn and official form, favorable to another government, and on the authority of which opinions that other government might hereafter found new claims or set up new pretensions. It is for this reason, as well as others, that the President feels so much regret at your desire of placing your construction of the provisions of the treaty, and your objections to those provisions, according to your construction, upon the records of the government.

Before examining the several objections suggested by you, it may be proper to take notice of what you say upon the course of the negotiation. In regard to this, having observed that the national dignity of the United States had not been compromited down to the time of the President's Message to the last sesssion of Congress, you proceed to say: "But England then urged the United States to enter into a conventional arrangement, by which we might be pledged to concur with her in measures for the suppression of the slave trade. Till then we had executed our own laws in our own way. But, yielding to this application, and departing from our former principle of avoiding European combinations upon subjects not American, we stipulated, in a solemn treaty, that we would carry into effect our own laws, and fixed the minimum force we would employ for that purpose."

The President can not conceive how you should have been led to adventure upon such a statement as this. It is but a tissue of mistakes. England did not urge the United States to enter into this conventional arrangement. The United States yielded to no application from England. The proposition for abolishing the slave trade, as it stands in the treaty, was an American proposition; it originated with the executive government of the United States, which cheerfully assumes all its responsibility. It stands upon it as its own mode of fulfilling its duties and accomplishing its objects. Nor have the United States departed, in this treaty, in the slightest degree from their former principles of avoiding European combinations upon subjects not American, because the abolition of the African slave trade is an American subject as emphatically as it is a European subject; and indeed more so, inasmuch as the government of the United States took the first great steps in declaring that trade unlawful, and in attempting its extinction. The abolition of this traffic is an object of the highest interest

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to the American people and the American government; and you seem strangely to have overlooked altogether the important fact, that nearly thirty years ago, by the Treaty of Ghent, the United States bound themselves, by solemn compact with England, to continue "their efforts to promote its entire abolition," both parties pledging themselves by that treaty to use their best endeavors to accomplish so desirable an object.

Again, you speak of an important concession made to the renewed application of England. But the treaty, let it be repeated, makes no concession to England whatever. It complies with no demand, grants no application, conforms to no request. All these statements, thus by you made, and which are so exceedingly erroneous, seem calculated to hold up the idea that in this treaty your government has been acting a subordinate or even a complying part.

The President is not a little startled that you should make such totally groundless assumptions of fact, and then leave a discreditable inference to be drawn from them. He directs me not only to repel this inference as if ought to be repelled, but also to bring to your serious consideration and reflection the propriety of such an assumed narration of facts as your dispatch, in this respect, puts forth.

Having informed the department that a copy of the letter of the 24th of August, addressed by me to you, had been delivered to M. Guizot, you proceed to say: "In executing this duty, I felt too well what was due to my government and country to intimate my regret to a foreign power that some declaration had not preceded the treaty, or some stipulation accompanied it, by which the extraordinary pretension of Great Britain to search our ships at all times and in all places, first put forth to the world by Lord Palmerston on the 27th of August, 1841, and on the 13th of October following again peremptorily claimed as a right by Lord Aberdeen, would have been abrogated, as equally incompatible with the laws of nations and with the independence of the United States. I confined myself, therefore, to a simple communication of your letter." It may be true that the British pretension leads necessarily to consequences as broad and general as your statement. But it is no more than fair to state that pretension in the words of the British government itself, and then it becomes matter of consideration and argument how broad and extensive it really is. The last statement of this pretension, or claim, by the British government is contained in Lord Aberdeen's note to Mr. Stevenson of the 13th of October, 1841. It is in these words: "The undersigned readily admits that to visit and search American vessels in time of peace, when that right of search is not granted by treaty, would be an infraction of public law,

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and a violation of national dignity and independence. But no such right is asserted. We sincerely desire to respect the vessels of the United States, but we may reasonably expect to know what it really is that we respect. Doubtless the flag is *prima facie* evidence of the nationality of the vessel; and, if this evidence were in its nature conclusive and irrefragable, it ought to preclude all further inquiry. But it is sufficiently notorious that the flags of all nations are liable to be assumed by those who have no right or title to bear them. Mr. Stevenson himself fully admits the extent to which the American flag has been employed for the purpose of covering this infamous traffic. The undersigned joins with Mr. Stevenson in deeply lamenting the evil; and he agrees with him in thinking that the United States ought not to be considered responsible for this abuse of their flag. But if all inquiry be resisted, even when carried no further than to ascertain the nationality of the vessel, and impunity be claimed for the most lawless and desperate of mankind in the commission of this fraud, the undersigned greatly fears that it may be regarded as something like an assumption of that responsibility which has been deprecated by Mr. Stevenson." * * * * * *

"The undersigned renounces all pretension on the part of the British government to visit and search American vessels in time of peace. Nor is it as American that such vessels are ever visited; but it has been the invariable practice of the British navy, and, as the undersigned believes, of all navies in the world, to ascertain, by visit, the real nationality of merchant vessels met with on the high seas, if there be good reason to apprehend their illegal character." * * * *

"The undersigned admits that, if the British cruiser should possess a knowledge of the American character of any vessel, his visitation of such vessel would be entirely unjustifiable. He further admits that so much respect and honor are due to the American flag, that no vessel bearing it ought to be visited by a British cruiser, except under the most grave suspicions and well-founded doubts of the genuineness of its character.

"The undersigned, although with pain, must add, that if such visit should lead to the proof of the American origin of the vessel, and that she was avowedly engaged in the slave trade, exhibiting to view the manacles, fetters, and other usual implements of torture, or had even a number of these unfortunate beings on board, no British officer could interfere further. He might give information to the cruisers of the United States, but it could not be in his own power to arrest or impede the prosecution of the voyage and the success of the undertaking.

"It is obvious, therefore, that the utmost caution is necessary in the exercise of this right claimed by Great Britain.

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While we have recourse to the necessary, and, indeed, the only means for detecting imposture, the practice will be carefully guarded and limited to cases of strong suspicion. The undersigned begs to assure Mr. Stevenson that the most precise and positive instructions have been issued to her majesty's officers on this subject."

Such are the words of the British claim or pretension; and it stood in this form at the delivery of the President's Message to Congress in December last: a message in which you are pleased to say that the British pretension was promptly met and firmly resisted.

I may now proceed to a more particular examination of the objections which you make to the treaty.

You observe that you think a just self-respect required of the government of the United States to demand of Lord Ashburton a distinct renunciation of the British claim to search our vessels, previous to entering into any negotiation. The government has thought otherwise; and this appears to be your main objection to the treaty, if, indeed, it be not the only one which is clearly and distinctly stated. The government of the United States supposed that, in this respect, it stood in a position in which it had no occasion to demand any thing, or ask for any thing, of England. The British pretension, whatever it was, or however extensive, was well known to the President at the date of his message to Congress at the opening of the last session. And I must be allowed to remind you how the President treated this subject in that communication.

"However desirous the United States may be," said he, "for the suppression of the slave trade, they can not consent to interpolations into the maritime code at the mere will and pleasure of other governments. We deny the right of any such interpolation to any one, or all the nations of the earth, without our consent. We claim to have a voice in all amendments or alterations of that code; and when we are given to understand, as in this instance, by a foreign government, that its treaties with other nations can not be executed without the establishment and enforcement of new principles of maritime police, to be applied without our consent, we must employ a language neither of equivocal import nor susceptible of misconstruction. American citizens prosecuting a lawful commerce in the African seas, under the flag of their country, are not responsible for the abuse or unlawful use of that flag by others; nor can they rightfully, on account of any such alleged abuses, be interrupted, molested, or detained while on the ocean; and if thus molested and detained while pursuing honest voyages in the usual way, and violating no law themselves, they are unquestionably entitled to indemnity."

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This declaration of the President stands: not a syllable of it has been, or will be, retracted. The principles which it announces rest on their inherent justice and propriety, on their conformity to public law, and, so far as we are concerned, on the determination and ability of the country to maintain them. To these principles the government is pledged, and that pledge it will be at all times ready to redeem.

But what is your own language on this point? You say "this claim (the British claim), thus asserted and supported, was promptly met and firmly repelled by the President in his message at the commencement of the last session of Congress; and in your letter to me approving the course I had adopted in relation to the question of the ratification by France of the quintuple treaty, you consider the principles of that message as the established policy of the government." And you add, "So far our national dignity was uncompromited." If this be so, what is there which has since occurred to compromit this dignity? You shall yourself be judge of this; because you say, in a subsequent part of your letter, that "the mutual rights of the parties are in this respect wholly untouched." If, then, the British pretension had been promptly met and firmly repelled by the President's Message; if, so far, our national dignity had not been compromited; and if, as you further say, our rights remain wholly untouched by any subsequent act or proceeding, what ground is there on which to found complaint against the treaty?

But your sentiments on this point do not concur with the opinions of your government. That government is of opinion that the sentiments of the message, which you so highly approve, are reaffirmed and corroborated by the treaty, and the correspondence accompanying it. The very object sought to be obtained, in proposing the mode adopted for abolishing the slave trade, was to take away all pretense whatever for interrupting lawful commerce by the visitation of American vessels. Allow me to refer you, on this point, to the following passage in the message of the President to the Senate, accompanying the treaty:

"In my message at the commencement of the present session of Congress, I endeavored to state the principles which this government supports respecting the right of search and the immunity of flags. Desirous of maintaining those principles fully, at the same time that existing obligations should be fulfilled, I have thought it most consistent with the dignity and honor of the country that it should execute its own laws and perform its own obligations by its own means and its own power. The examination or visitation of the merchant vessels of one nation by the cruisers of another, for any purposes ex-

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cept those known and acknowledged by the law of nations, under whatever restraints or regulations it may take place, may lead to dangerous results. It is far better by other means to supersede any supposed necessity, or any motive, for such examination or visit. Interference with a merchant vessel by an armed cruiser is always a delicate proceeding, apt to touch the point of national honor, as well as to affect the interests of individuals. It has been thought, therefore, expedient, not only in accordance with the stipulations of the Treaty of Ghent, but at the same time as removing all pretext on the part of others for violating the immunities of the American flag upon the seas, as they exist and are defined by the law of nations, to enter into the articles now submitted to the Senate.

"The treaty which I now submit to you proposes no alteration, mitigation, or modification of the rules of the law of nations. It provides simply that each of the two governments shall maintain on the coast of Africa a sufficient squadron to enforce, separately and respectively, the laws, rights, and obligations of the two countries for the suppression of the slave trade."

In the actual posture of things, the President thought that the government of the United States, standing on its own rights and its own solemn declarations, would only weaken its position by making such a demand as appears to you to have been expedient. We maintain the public law of the world as we receive it and understand it to be established. We defend our own rights and our own honor, meeting all aggression at the boundary. Here we may well stop.

You are pleased to observe, that "under the circumstances of the assertion of the British claim, in the correspondence of the British secretaries, and of its denial by the President of the United States, the eyes of Europe were upon these two great naval powers; one of which had advanced a pretension, and avowed her determination to enforce it, which might at any moment bring them into collision."

It is certainly true that the attention of Europe has been very much awakened, of late years, to the general subject, and quite alive, also, to whatever might take place in regard to it between the United States and Great Britain. And it is highly satisfactory to find that, so far as we can learn, the opinion is universal that the government of the United States has fully sustained its rights and its dignity by the treaty which has been concluded. Europe, we believe, is happy to see that a collision, which might have disturbed the peace of the whole civilized world, has been avoided in a manner which reconciles the performance of a high national duty, and the fulfillment of positive stipulations, to the perfect immunity of flags and the equality of nations upon the ocean. I must be per-

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mitted to add that, from every agent of the government abroad who has been heard from on the subject, with the single exception of your own letter (an exception most deeply regretted), as well as from every part of Europe where maritime rights have advocates and defenders, we have received nothing but congratulation. And at this moment, if the general sources of information may be trusted, our example has recommended itself already to the regard of states the most jealous of British ascendency at sea; and the treaty against which you remonstrate may soon come to be esteemed by them as a fit model for imitation.

Toward the close of your dispatch, you are pleased to say: "By the recent treaty we are to keep a squadron upon the coast of Africa. We have kept one there for years—during the whole term, indeed, of these efforts to put a stop to this most iniquitous commerce. The effect of the treaty is, therefore, to render it obligatory upon us, by a convention, to do what we have long done voluntarily—to place our municipal laws, in some measure, beyond the reach of Congress." Should the effect of the treaty be to place our municipal laws, in some measure, beyond the reach of Congress, it is sufficient to say that all treaties containing obligations necessarily do this. All treaties of commerce do it; and, indeed, there is hardly a treaty existing, to which the United States are party, which does not, to some extent, or in some way, restrain the legislative power. Treaties could not be made without producing this effect.

But your remark would seem to imply that, in your judgment, there is something derogatory to the character and dignity of the country in thus stipulating with a foreign power for a concurrent effort to execute the laws of each. It would be a sufficient refutation of this objection to say that, if in this arrangement there be any thing derogatory to the character and dignity of one party, it must be equally derogatory, since the stipulation is perfectly mutual, to the character and dignity of both. But it is derogatory to the character and dignity of neither. The objection seems to proceed still upon the implied ground that the abolition of the slave trade is more a duty of Great Britain, or a more leading object with her, than it is or should be with us; as if, in this great effort of civilized nations to do away the most cruel traffic that ever scourged or disgraced the world, we had not as high and honorable, as just and merciful a part to act, as any other nation upon the face of the earth. Let it be forever remembered, that in this great work of humanity and justice the United States took the lead themselves. This government declared the slave trade unlawful; and in this declaration it has been followed by the

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great powers of Europe. This government declared the slave trade to be piracy; and in this, too, its example has been followed by other states. This government—this young government—springing up in this new world within half a century; founded on the broadest principles of civil liberty, and sustained by the moral sense and intelligence of the people, has gone in advance of all other nations in summoning the civilized world to a common effort to put down and destroy a nefarious traffic reproachful to human nature. It has not deemed, and it does not deem, that it suffers any derogation from its character or its dignity, if, in seeking to fulfill this sacred duty, it act, as far as necessary, on fair and equal terms of concert with other powers having in view the same praiseworthy object. Such were its sentiments when it entered into the solemn stipulations of the Treaty of Ghent; such were its sentiments when it requested England to concur with us in declaring the slave trade to be piracy; and such are the sentiments which it has manifested on all other proper occasions.

In conclusion, I have to repeat the expression of the President's deep regret at the general tone and character of your letter, and to assure you of the great happiness it would have afforded him if, concurring with the judgment of the President and Senate—concurring with what appears to be the general sense of the country—concurring in all the manifestations of enlightened public opinion in Europe—you had seen nothing in the treaty of the 9th of August to which you could not give your cordial approbation.

I have, &c., DANIEL WEBSTER.

LEWIS CASS, Esq., &c., &c., &c.

Mr. Cass to Mr. Webster.

NEW YORK, *December* 11, 1842.

SIR,—Upon my arrival here yesterday, the duplicate of your letter of November 14 was delivered to me. I embrace the first moment in my power to acknowledge its receipt.

I am too well aware of what is due from me to the government to renew, or unnecessarily to prolong, the discussion of the subject contained in my letter of October 3. In submitting to you the views I entertained, I fulfilled a duty which, in my opinion, circumstances imposed upon me. But I should consider myself obnoxious to the censure of improper interference, with which you have not sparingly reproached me, but from which I trust I shall satisfy you I am free, did I seek to make my correspondence with the department the vehicle for obtruding my sentiments upon the government. Still, I am anxious not to be misunderstood, and more especially since you give me to understand that the communications which have

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passed between us upon this subject are to be published, and thus submitted to the great tribunal of public opinion, which will be called upon to decide respecting the course I have deemed it necessary to adopt, as well as the manner in which I have fulfilled the task. And as you have, in several instances, misapprehended my views, and adapted your reasoning to your constructions rather than to my sentiments, and as I have full confidence in your desire to do me justice, I must beg leave briefly to lay before you such considerations connected with my letter, and your comments upon it, as are essential to a correct judgment between us.

And, first, with respect to the procedure on my part.

You object to my whole course of action in this matter, because it appears to you to be "intended as a sort of protest or remonstrance against a transaction of the government," &c.

I have been very unhappy in the mode in which I have expressed myself, if I am justly liable to this charge. My letter is not a protest or a remonstrance. It is a simple answer to a dispatch which I had the honor to receive from you. In your letter of August 29, you communicated to me the views of the President in relation to the treaty then recently concluded with England; and you also authorized me to make known these views to the French government. This I did, both in conversation and in writing. Here was a dispatch requiring my action, and which received it in good faith. But I did not coincide with you in opinion respecting an important bearing of this treaty. I thought it left us in a worse position than it found us; and so thinking, I deemed it my right, and felt it my duty, to lay before you the impression which the whole matter had left upon my mind. I did so, and the result is before you. Under these circumstances, was I guilty of indiscretion, or of an impertinent interference, still more offensive, which, it seems to me, from the tone of your letter, is the construction you put upon my action?

This question will, perhaps, be best answered by another. Is it the duty of a diplomatic agent to receive all the communications of his government, and to carry into effect their instructions *sub silentio*, whatever may be his own sentiments in relation to them? Or, is he not bound, as a faithful representative, to communicate freely, but respectfully, his own views, that these may be considered and receive their due weight in that particular case, or in other circumstances involving similar considerations? It seems to me that the bare enunciation of the principle is all that is necessary for my justification. I am speaking now of the propriety of my action, not of the manner in which it was performed. I may have executed the task well or ill; I may have introduced topics unadvisedly, and

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urged them indiscreetly. All this I leave without remark. I am only endeavoring here to free myself from the serious charge which you bring against me. If I have misapprehended the duties of an American diplomatic agent upon this subject, I am well satisfied to have withdrawn, by a timely resignation, from a position in which my own self-respect would not permit me to remain. And I may express the conviction that there is no government—certainly none this side of Constantinople—which would not encourage, rather than rebuke, the free expression of the views of their representatives in foreign countries. But, independently of this general objection to all action on my part, you present me with another, perhaps still more formidable, but which is applicable only to the circumstances of this case. Without repeating in full the view you urge upon this part of the subject, I shall condense the objection into the proposition that the expression of my sentiments to the government upon this occasion might induce England hereafter "to rely upon my authority for a construction favorable to her own pretensions, and inconsistent with the interest and honor of the United States."

In the first place, I would remark that I have written for my own government, and not for that of England. The publication of my letter which is to produce this result is to be the act of the government, and not my act. But if the President should think that the slightest injury to the public interest would ensue from the disclosure of my views, the letter may be buried in the archives of the department, and thus forgotten and rendered harmless.

But, even were immediate publicity to be given to it, I know my own insignificance too well to believe it would produce the slightest influence upon the pretensions or the course of England. The English public, and especially the English statesmen, are too sagacious to need the suggestions of any foreigner, and too pertinacious in the assertion of their claims to seek his authority for their support. When England, in her progress to that supremacy upon the ocean which has been the steady object of her ambition for centuries, and will continue to be so, abandons a single pretension after she has once advanced it, then there may be reason to believe she has adopted a system of moderation, which may be strengthened or weakened, as the opinion of others is favorable or unfavorable to her. There is no evidence that that time is near. But were it otherwise, does it follow that in all discussions between nations it is the duty of every man to believe his own government has attained every object which the interest or honor of the country requires; or, not believing it, to remain silent, and to refrain from all representations, either to the government itself or to

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the public, with a view to the ultimate correction of the error, and to the relief of his country from a false position? I must confess I do not carry my patriotic devotion thus far. I agree that when nations have appealed from argument to force, and when a war is raging, it is the duty of every citizen to put all other considerations behind him, and, avoiding profitless and party discussions upon the past, to join with head, heart, and hand to repel the common foe. At such a time I would not speak words of censure even to my countrymen, lest I should be overheard by the enemy. And that this is not with me a barren doctrine, I trust I have given sufficient evidence in perilous times. But I was not prepared for that excess of patriotic zeal (pardon me the expression, for such it appears to me) which would carry this reserve into all the actions of the government, as well in peace as in war. I believe that in our recent treaty with England sufficient precaution was not taken to guard against her claim to search our ships. This belief I entertain in common with many other citizens, in office and out of office; and I, as well as they, have expressed it. It has been declared in the Senate, in the public journals, in every district of our country. And I can not feel that this avowal of our sentiments, in whatever form it is made, whether official or unofficial, justly subjects us to the charge of taking a course which may hereafter enable other governments to "set up new pretensions."

Permit me now to advert to the serious charge you have made against me of venturing upon *a statement which is a tissue of mistakes*. This statement you quote, and it is that part of my letter in which, after showing that, to a certain point of time, our national honor had been preserved inviolate, I proceed to show that the subsequent course of events had not been equally fortunate. I remark, that England then urged the United States to enter into a conventional arrangement by which the joint action of the two countries in the suppression of the slave trade might be secured. You pronounce this statement a mistake, and assert that the proposition came from our government.

That the particular mode in which the governments should act in concert, as finally arranged in the treaty, was suggested by yourself, I never doubted; and if this is the construction I am to give to your denial of my correctness, there is no difficulty upon the subject. The question between us is untouched. All I said was, that England continued to prosecute the matter; that she presented it for negotiation; and that we, therefore, consented to its introduction; and if Lord Ashburton did not come out with instructions from his government to endeavor to effect some arrangement upon this subject, the world

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has strangely misunderstood one of the great objects of his mission, and I have misunderstood that paragraph in your first note where you say that Lord Ashburton comes with full powers to negotiate and settle all matters in discussion between England and the United States. But the very fact of his coming here, and of his acceding to any stipulations respecting the slave trade, is conclusive proof that his government were desirous to obtain the co-operation of the United States. I had supposed our government would scarcely take the initiative in this matter, and urge it upon that of Great Britain, either in Washington or in London. If it did so, I can only express my regret, and confess that I have been led inadvertently into an error.

You then proceed to remark, in continuation of this *tissue of mistakes*, that, in entering into this arrangement, the United States did not depart from the principle of avoiding European combinations upon a subject not American, because the abolition of the slave trade is equally an American and European subject. This may be so. I may be wrong in the application of the principle; but such an erroneous conclusion scarcely justifies the epithet of an *adventurous statement—one of a tissue of mistakes*. But, apart from this, I still think that combinations of this kind are among the "entangling alliances" against which the great statesman, whose exposition of our constitution will go down to posterity with the instrument itself, warned his countrymen; and the perpetually recurring difficulties, which are presenting themselves in the execution of the conventions between France and England upon this subject, should be a caution to nations against the introduction of new maritime principles whose operations and results it is difficult to foresee.

But is the suppression of the African slave trade one of those American objects in the attainment of which we ought to seek the co-operation of other nations, and regulate our own duties and theirs by treaty stipulations? I do not think so. In the first place, the principle would necessarily lead us to form alliances with every maritime nation. It is not England alone whose flag rides over the seas. Other countries must co-operate, if any co-operation is necessary; and, if we have made propositions to England to join us in this effort, I do not see why we stop there, and deprive ourselves of the aid which the action of other nations would afford. I doubt if the people of this country are prepared for such extensive combinations.

But, again, while fully agreeing with you in all the odium you cast upon that infamous traffic, it appears to me that any object interesting to humanity, and in which nations may with propriety engage, has the same claim, if not in degree, at least

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in principle, upon our interference, and calls upon us for a union with other nations to effect it. It may be easily seen, not where such a doctrine would conduct us—that escapes human sagacity—but toward what ruinous consequences it leads.

You conclude this branch of the subject by informing me that you are directed by the President to bring to my "serious consideration and reflection the propriety of such an assumed narration of facts as your dispatch in this respect puts forth." I shall not say one word to give the President any cause of offense; and, if I felt that I was justly obnoxious to this censure, I should submit to the rebuke in silence. He would have a right to make it, and it would be my duty to acquiesce; but I have that confidence in his innate love of justice, that he will receive my explanations, and judge me by my words, and not by unauthorized constructions.

Now, in all that I have said in the paragraph to which you allude, and which you have so strongly qualified, you have pointed out but one fact as erroneous, and that is the assertion that the introduction of the subject of the slave trade into the treaty was due to the application of England; and whether even this was an error, depends upon the construction to be given to your explanation. All else—I repeat it, all else, to the very least idea, is matter of inference; it is my deduction from the circumstances of the case. I may be right or wrong, logically, in the conclusions I have reached; but certainly I am not morally responsible for their correctness, as I should be if I asserted merely naked facts. It is, therefore, with not a little astonishment I have read and re-read what I wrote, and the commentary you have been pleased to make upon it. It is neither necessary nor proper that I should renew the general subject of my letter; and, therefore, I do not feel it my duty to trouble you with any remarks respecting the views you have presented me of the pretensions of the British government to search our ships; but, when you proceed to array me against myself, I must claim the right to vindicate my own consistency. You quote me, and quote me correctly, as saying that, up to the delivery of the annual message of 1841, our national dignity was uncompromited. You then ask what has since occurred to compromit this dignity? and you add, emphatically, that I shall myself be the judge of this, because, in a subsequent part of my dispatch, I say the mutual rights of the parties are wholly unchanged; and you ask, if they are unchanged, what ground there is on which to found a complaint against the treaty. I think that a very brief retrospect will be the best answer I can give to this question, and that it will redeem me from the implied charge of inconsistency.

I never said nor intimated in my dispatch to you, nor in any

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manner whatever, that our government had conceded to that of England the right to search our ships. That idea, however, pervades your letter, and is very apparent in that part of it which brings to my observation the possible effect of my views upon the English government; but in this you do me, though, I am sure, unintentionally, great injustice. I repeatedly state that the recent treaty leaves the rights of the parties as it found them. My difficulty is not that we have made a positive concession, but that we have acted unadvisedly in not making the abandonment of this pretension a previous condition to any conventional arrangement upon the general subject. I had supposed, till I read your letter, that this view was too distinctly expressed in my dispatch to admit of any misconstruction. I will condense into a small space what I deem it necessary to say in defense of my consistency.

England claimed the right, in order, as she said, to carry into effect certain treaties she had formed for the suppression of the slave trade, to board and search our vessels upon the high seas wherever she might find them. Our government, with energy and promptness, repelled this pretension. Shortly after, a special British embassador arrived in our country, having powers to treat upon this matter of the slave trade. The negotiation terminated by an arrangement which secures the co-operation of the United States in the efforts that England is making upon this subject; but not a word is said upon the serious claim that subjects to the naval inquisition of a commercial rival our ships, which the enterprise of our merchants is sending to every part of our globe; and yet this claim arises out of the very subject-matter embraced in the treaty. We negotiate with England for the suppression of the slave trade at the very moment her statesmen are telling us, in no measured terms, that, to suppress it, she will violate our flag, and that she will never give up this pretension. Now here, it appears to me, the government should have stopped. The English negotiator should have been told, "We abhor as much as you do the traffic in human beings, and we will do all that our peculiar institutions permit to put an end to it; but we will not suffer this matter to be made a pretext for wounding our honor and violating our rights; we will not take a single step till you renounce this claim; we have denounced it already; and, if we should negotiate upon the subject-matter without settling this preliminary question, it may seem like an abandonment of the ground we have taken, or an indifference to the consequences."

Had this course been pursued, the sincerity of the British government would have undergone a practical test, from which there would have been no escape. It would not have been

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necessary to quote the last dispatch of Lord Aberdeen to show what he meant in another, or Lord Palmerston in the first. If such a proposition had been made and accepted, our honor would have been vindicated, our rights secured, and a bright example of sincerity and moderation would have been given to the world by a great nation. If it had been rejected, that would have proved that our co-operation in the suppression of the slave trade was a question of minor importance, to be sacrificed to the preservation of a pretension intended to introduce an entire change in the maritime police of the world.

Why this very obvious course was not adopted, I am utterly at a loss to conjecture; and that it was not, is precisely the objection to which the whole arrangement is liable. Instead of the high ground we should then have occupied, we now find ourselves seriously discussing the question whether or not England will enforce this claim. That she will do so when her interest requires it, I have no more doubt than I have that she has already given us abundant proof that the received code of public law is but a feeble barrier when it stands in the way of power and ambition. Lord Palmerston and Lord Aberdeen both tell us she will.

You refer to that part of my letter in which I observe that the effect of the new stipulation is to place our municipal laws, in some measure, beyond the reach of Congress, and remark that such is often the effect of commercial treaties. It is so, and we can only expect to obtain commercial advantages by stipulations for corresponding advantages, which, while they endure, are beyond the reach of ordinary legislation. This is matter of necessity. But this necessity does not exist in the punishment of crimes. We are able to enforce our own laws; and I do not see that the power to enforce those of England gives us any just compensation for permitting her to interfere in our criminal code, whether the offense is committed upon the land or upon the water. It seems to me a principle fraught with dangerous consequences, and which a prudent government had better avoid.

There is but one other topic which I consider it necessary to advert to; but that is an important one, and I pray your indulgence while I briefly allude to it.

You speak of the ratification of the treaty by the President and Senate, and add that it does not appear to you that I had any grounds of complaint because their opinion was at variance with mine. I submit that this is making an issue for me which I have not made for myself. In no part of my letter will be found the slightest imputation upon the President or Senate for the ratification of this treaty. I could not make such an imputation, for the plain reason that I never censured

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the ratification. I am under the impression that if I had had a vote to give, I should have been found among the majority upon that occasion. This, however, would have been upon the condition that some declaration should be annexed to the act of ratification denouncing the pretension to search our ships. I would then have sent the instrument to the British government, and placed upon them the responsibility of its final rejection or ratification; and I am sure we should have had the opinion of the world with us under such circumstances.

The rejection of a treaty duly negotiated is a serious question; to be avoided, whenever it can be without too great a sacrifice. Though the national faith is not actually committed, still it is more or less engaged; and there were peculiar circumstances, growing out of long-standing difficulties, which rendered an amicable agreement of the various matters in dispute with England a subject of great national interest. But the negotiation of a treaty is a far different subject. Topics are omitted or introduced at the discretion of the negotiators, and they are responsible, to use the language of an eminent and able senator, for "what it contains and what it omits." This treaty, in my opinion, omits a most important and necessary stipulation, and therefore, as it seems to me, its negotiation in this particular was unfortunate for the country.

In conclusion, I beg you to tender to the President my thanks for the kind appreciation he made of my services in the letter of recall, and to express to him my hope that, on a full consideration of the circumstances, he will be satisfied that if my course was not one he can approve, it, at all events, was such as to relieve me from the charge of an improper interference in a subject not within the sphere of my duties.

I must pray you, as an act of justice, to give the same publicity to this letter that you may give to my letter of October 3d, and to your answer.

Very respectfully, &c., LEWIS CASS.

Hon. DANIEL WEBSTER, *Secretary of State.*

Mr. Webster to Mr. Cass.

DEPARTMENT OF STATE, *Washington, December* 20, 1842.

SIR,—Your letter of the 11th instant has been submitted to the President. He directs me to say, in reply, that he continues to regard your correspondence, of which this letter is part, as being quite irregular from the beginning. You had asked leave to retire from your mission; the leave was granted by the President, with kind and friendly remarks upon the manner in which you had discharged its duties. Having asked for this honorable recall, which was promptly given, you afterward addressed to this department your letter of the 3d of October,

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which, however it may appear to you, the President can not but consider as a remonstrance, a protest against the treaty of the 9th of August; in other words, an attack upon his administration for the negotiation and conclusion of that treaty. He certainly was not prepared for this. It came upon him with no small surprise, and he still feels that you must have been, at the moment, under the influence of temporary impressions which he can not but hope have, ere now, worn away.

A few remarks upon some of the points of your last letter must now close the correspondence.

In the first place, you object to my having called your letter of October 3d a "protest or remonstrance" against a transaction of the government, and observe that you must have been unhappy in the mode of expressing yourself, if you were liable to this charge.

What other construction your letter will bear, I can not perceive. The transaction was *finished*. No letter or remarks of yourself, or any one else, could undo it, if desirable. Your opinions were unsolicited. If given as a citizen, then it was altogether unusual to address them to this department in an official dispatch; if as a public functionary, the whole subject-matter was quite aside from the duties of your particular station. In your letter you did not propose any thing *to be done*, but objected to what had been done. You did not suggest any method of remedying what you were pleased to consider a defect, but stated what you thought to be reasons for fearing its consequences. You declared that there had been, in your opinion, an omission to assert American rights; to which omission you gave the department to understand that you would never have consented.

In all this there is nothing but protest and remonstrance; and, though your letter be not formally entitled such, I can not see that it can be construed, in effect, as any thing else; and I must continue to think, therefore, that the terms used are entirely applicable and proper.

In the next place, you say, "You give me to understand that the communications which have passed between us on this subject are to be published and submitted to the great tribunal of public opinion."

It would have been better if you had quoted my remark with entire correctness. What I said was, not that the communications which have passed between us *are to be* published, or *must* be published, but that "it may become necessary hereafter to publish your letter, in connection with other correspondence of the mission; and, although it is not to be presumed that you looked to such publication, because such a presumption would impute to you a claim to put forth your private

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opinions upon the conduct of the President and Senate, in a transaction finished and concluded, through the imposing form of a public dispatch; yet, if published, it can not be foreseen how far England might hereafter rely on your authority for a construction favorable to her own pretensions, and inconsistent with the interest and honor of the United States."

In another part of your letter you observe, "The publication of my letter, which is to produce this result, is to be the act of the government, and not my act. But if the President should think that the slightest injury to the public interest would ensue from the disclosure of my views, the letter may be buried in the archives of the department, and thus forgotten and rendered harmless."

To this, I have to remark, in the first place, that instances have occurred in other times, not unknown to you, in which highly important letters from ministers of the United States, in Europe, to their own government, have found their way into the newspapers of Europe, when that government itself held it to be inconsistent with the interest of the United States to make such letter public.

But it is hardly worth while to pursue a topic like this.

You are pleased to ask: "Is it the duty of a diplomatic agent to receive all the communications of his government, and to carry into effect their instructions *sub silentio*, whatever may be his own sentiments in relation to them; or is he not bound, as a faithful representative, to communicate freely, but respectfully, his own views, that these may be considered, and receive their due weight, in that particular case, or in other circumstances involving similar considerations? It seems to me that the bare enunciation of the principle is all that is necessary for my justification. I am speaking now of the propriety of my action, not of the manner in which it was performed. I may have executed the task well or ill. I may have introduced topics unadvisedly, and urged them indiscreetly. All this I leave without remark. I am only endeavoring here to free myself from the serious charge which you bring against me. If I have misapprehended the duties of an American diplomatic agent upon this subject, I am well satisfied to have withdrawn, by a timely resignation, from a position in which my own self-respect would not permit me to remain. And I may express the conviction that there is no government, certainly none this side of Constantinople, which would not encourage rather than rebuke the free expression of the views of their representatives in foreign countries."

I answer, certainly not. In the letter to which you were replying, it was fully stated that, "in common with every other citizen of the republic, you have an unquestionable right to

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form opinions upon public transactions and the conduct of public men. But it will hardly be thought to be among either the duties or the privileges of a minister abroad to make formal remonstrances and protests against proceedings of the various branches of the government at home, upon subjects in relation to which he himself has not been charged with any duty, or partaken any responsibility."

You have not been requested to bestow your approbation upon the treaty, however gratifying it would have been to the President to see that, in that respect, you united with other distinguished public agents abroad. Like all citizens of the republic, you are quite at liberty to exercise your own judgment upon that as upon other transactions. But neither your observations nor this concession cover the case. They do not show that, as a public minister abroad, it is a part of your official functions, in a public dispatch, to remonstrate against the conduct of the government at home in relation to a transaction in which you bore no part, and for which you were in no way answerable. The President and Senate must be permitted to judge for themselves in a matter solely within their control. Nor do I know that, in complaining of your protest against their proceedings in a case of this kind, any thing has been done to warrant, on your part, an invidious and unjust reference to Constantinople. If you could show, by the general practice of diplomatic functionaries in the civilized part of the world—and, more especially, if you could show by any precedent drawn from the conduct of the many distinguished men who have represented the government of the United States abroad—that your letter of the 3d of October was, in its general object, tone, and character, within the usual limits of diplomatic correspondence, you may be quite assured that the President would not have recourse to the code of Turkey in order to find precedents the other way.

You complain that, in the letter from this department of the 14th of November, a statement contained in yours of the 3d of October is called a tissue of mistakes, and you attempt to show the impropriety of this appellation. Let the point be distinctly stated, and what you say in reply be then considered.

In your letter of October 3d you remark, "that England then urged the United States to enter into a conventional arrangement, by which we might be pledged to concur with her in measures for the suppression of the slave trade. Until then, we had executed our own laws in our own way; but, yielding to this application, and departing from our former principle of avoiding European combinations upon subjects not American, we stipulated in a solemn treaty that we would carry into effect our own laws, and fixed the minimum force we would employ for that purpose."

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The letter of this department of the 14th of November having quoted this passage, proceeds to observe, that "the President can not conceive how you should have been led to adventure upon such a statement as this. It is but a tissue of mistakes. England did not urge the United States to enter into this conventional arrangement. The United States yielded to no application from England. The proposition for abolishing the slave trade, as it stands in the treaty, was an American proposition; it originated with the executive government of the United States, which cheerfully assumes all its responsibility. It stands upon it as its own mode of fulfilling its duties and accomplishing its objects. Nor have the United States departed in the slightest degree from their former principles of avoiding European combinations upon subjects not American; because the abolition of the African slave trade is an American subject as emphatically as it is a European subject, and, indeed, more so, inasmuch as the government of the United States took the first great step in declaring that trade unlawful, and in attempting its extinction. The abolition of this traffic is an object of the highest interest to the American people and the American government; and you seem strangely to have overlooked altogether the important fact, that nearly thirty years ago, by the Treaty of Ghent, the United States bound themselves, by solemn compact with England, to continue their efforts to promote its entire abolition; both parties pledging themselves by that treaty to use their best endeavors to accomplish so desirable an object."

Now, in answer to this, you observe in your last letter, "that the particular mode in which the governments should act in concert, as finally arranged in the treaty, was suggested by yourself, I never doubted. And if this is the construction I am to give to your denial of my correctness, there is no difficulty upon the subject. The question between us is untouched. All I said was, that England continued to prosecute the matter; that she presented it for negotiation, and that we thereupon consented to its introduction. And if Lord Ashburton did not come out with instructions from his government to endeavor to effect some arrangement upon this subject, the world has strangely misunderstood one of the great objects of his mission, and I have misunderstood that paragraph in your first note, when you say that Lord Ashburton comes with full powers to negotiate and settle all matters in discussion between England and the United States. But the very fact of his coming here, and of his acceding to any stipulations respecting the slave trade, is conclusive proof that his government were desirous to obtain the co-operation of the United States. I had supposed that our government would scarcely take the

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initiative in this matter, and urge it upon that of Great Britain, either in Washington or in London. If it did so, I can only express my regret, and confess that I have been led inadvertently into an error."

It would appear from all this, that that which, in your first letter, appeared as a direct statement of facts, of which you would naturally be presumed to have had knowledge, sinks at last into inferences and conjectures. But, in attempting to escape from some of the mistakes of this tissue, you have fallen into others. "All I said was," you observe, "that England continued to prosecute the matter; that she presented it for negotiation, and that we thereupon consented to its introduction." Now the English minister no more presented this subject for negotiation than the government of the United States presented it. Nor can it be said that the United States consented to its introduction in any other sense than it may be said that the British minister consented to it. Will you be good enough to review the series of your own assertions on this subject, and see whether they can possibly be regarded merely as a statement of your own inferences? Your only authentic fact is a general one, that the British minister came clothed with full power to negotiate and settle all matters in discussion. This, you say, is conclusive proof that his government was desirous to obtain the co-operation of the United States respecting the slave trade; and then you infer that England continued to prosecute this matter, and presented it for negotiation, and that the United States consented to its introduction; and give to this inference the shape of a direct statement of a fact.

You might have made the same remarks, and with the same propriety, in relation to the subject of the "Creole," that of impressment, the extradition of fugitive criminals, or any thing else embraced in the treaty or in the correspondence, and then have converted these inferences of your own into so many facts. And it is upon conjectures like these, it is upon such inferences of your own, that you made the direct and formal statement in your letter of the 3d of October, that "England then urged the United States to enter into a conventional arrangement, by which we might be pledged to concur with her in measures for the suppression of the slave trade. Until then, we had executed our laws in our own way; but, yielding to this application, and departing from our former principle of avoiding European combinations upon subjects not American, we stipulated in a solemn treaty that we would carry into effect our own laws, and fixed the minimum force we would employ for that purpose."

The President was well warranted, therefore, in requesting your serious reconsideration and review of that statement.

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Suppose your letter to go before the public unanswered and uncontradicted; suppose it to mingle itself with the general political history of the country, as an official letter among the archives of the Department of State, would not the general mass of readers understand you as reciting facts, rather than as drawing your own conclusions? as stating history, rather than as presenting an argument? It is of an incorrect narrative that the President complains. It is that, in your hotel at Paris, you should undertake to write a history of a very delicate part of a negotiation carried on at Washington, with which you had nothing to do, and of the history of which you had no authentic information; and which history, as you narrate it, reflects not a little on the independence, wisdom, and public spirit of the administration.

As of the history of this part of the negotiation you were not well informed, the President can not but think it would have been more just in you to have refrained from any attempt to give an account of it.

You observe, further: "I never mentioned in my dispatch to you, nor in any manner whatever, that our government had conceded to that of England the right to search our ships. That idea, however, pervades your letter, and is very apparent in that part of it which brings to my observation the possible effect of my views upon the English government. But in this you do me, though, I am sure, unintentionally, great injustice. I repeatedly state that the recent treaty leaves the rights of the parties as it found them. My difficulty is not that we have made a positive concession, but that we have acted unadvisedly in not making the abandonment of this pretension a previous condition to any conventional arrangement upon the general subject."

On this part of your letter I must be allowed to make two remarks:

The first is, inasmuch as the treaty gives no color or pretext whatever to any right of searching our ships, a declaration against such a right would have been no more suitable to this treaty than a declaration against the right of sacking our towns in time of peace, or any other outrage.

The rights of merchant vessels of the United States on the high seas, as understood by this government, have been clearly and fully asserted. As asserted, they will be maintained; nor would a declaration such as you propose have increased either its resolution or its ability in this respect. The government of the United States relies on its own power, and on the effective support of the people, to assert successfully all the rights of all its citizens, on the sea as well as on the land; and it asks respect for these rights not as a boon or favor from any nation.

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The President's Message, most certainly, is a clear declaration of what the country understands to be its rights, and his determination to maintain them—not a mere promise to negotiate for these rights, or to endeavor to bring other powers into an acknowledgment of them, either express or implied. Whereas, if I understand the meaning of this part of your letter, you would have advised that something should have been offered to England which she might have regarded as a benefit, but coupled with such a declaration or condition as that, if she received the boon, it would have been a recognition by her of a claim which we make as matter of right. The President's view of the proper duty of the government has certainly been quite different. Being convinced that the doctrine asserted by this government is the true doctrine of the law of nations, and feeling the competency of the government to uphold and enforce it for itself, he has not sought, but, on the contrary, has sedulously avoided, to change this ground, and to place the just rights of the country upon the assent, express or implied, of any power whatever.

The government thought no skillfully extorted promises necessary in any such cases. It asks no such pledges of any nation. If its character for ability and readiness to protect and defend its own rights and dignity is not sufficient to preserve them from violation, no interpolation of promise to respect them, ingeniously woven into treaties, would be likely to afford such protection. And, as our rights and liberties depend for existence upon our power to maintain them, general and vague protests are not likely to be more effectual than the Chinese method of defending their towns, by painting grotesque and hideous figures on the walls to fright away assailing foes.

My other remark on this portion of your letter is this:

Suppose a declaration to the effect that this treaty should not be considered as sacrificing any American rights had been appended, and the treaty, thus fortified, had been sent to Great Britain, as you propose; and suppose that that government, with equal ingenuity, had appended an equivalent written declaration that it should not be considered as sacrificing any British right, how much more defined would have been the rights of either party, or how much clearer the meaning and interpretation of the treaty, by these reservations on both sides? Or, in other words, what is the value of a protest on one side, balanced by an exactly equivalent protest on the other?

No nation is presumed to sacrifice its rights, or give up what justly belongs to it, unless it expressly stipulates that, for some good reason or adequate consideration, it does make such relinquishment; and an unnecessary asseveration that it does not intend to sacrifice just rights would seem only calculated to in-

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vite aggression. Such proclamations would seem better devised for concealing weakness and apprehension, than for manifesting conscious strength and self-reliance, or for inspiring respect in others.

Toward the end of your letter you are pleased to observe:

"The rejection of a treaty, duly negotiated, is a serious question, to be avoided whenever it can be without too great a sacrifice. Though the national faith is not actually committed, still it is more or less engaged. And there were peculiar circumstances growing out of long-standing difficulties, which rendered an amicable arrangement of the various matters in dispute with England a subject of great national interest. But the negotiation of a treaty is a far different subject. Topics are omitted or introduced at the discretion of the negotiators, and they are responsible, to use the language of an eminent and able senator, for 'what it contains and what it omits.' This treaty, in my opinion, omits a most important and necessary stipulation; and, therefore, as it seems to me, its negotiation, in this particular, was unfortunate for the country."

The President directs me to say, in reply to this, that in the Treaty of Washington no topics were omitted, and no topics introduced, at the mere discretion of the negotiator; that the negotiation proceeded from step to step, and from day to day, under his own immediate supervision and direction; that he himself takes the responsibility for what the treaty contains and what it omits, and cheerfully leaves the merits of the whole to the judgment of the country.

I now conclude this letter, and close this correspondence, by repeating once more the expression of the President's regret that you should have commenced it by your letter of the 3d of October.

It is painful to him to have with you any cause of difference. He has a just appreciation of your character and your public services at home and abroad. He can not but persuade himself that you must be aware yourself, by this time, that your letter of October was written under erroneous impressions, and that there is no foundation for the opinions, respecting the treaty, which it expresses; and that it would have been far better on all accounts if no such letter had been written.

I have, &c., DANIEL WEBSTER.

LEWIS CASS, Esq., *Late Minister of the United States at Paris.*

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PRESIDENT'S MESSAGE, TRANSMITTING THE TREATY OF WASHINGTON TO THE SENATE.

To the Senate of the United States:

I have the satisfaction to communicate to the Senate the results of the negotiations recently had in this city with the British minister special and extraordinary.

These results comprise:

1st. A treaty to settle and define the boundaries between the territories of the United States and the possessions of her Britannic majesty in North America, for the suppression of the African slave trade, and the surrender of criminals, fugitive from justice, in certain cases.

2d. A correspondence on the subject of the interference of the colonial authorities of the British West Indies with American merchant vessels driven by stress of weather, or carried by violence, into the ports of those colonies.

3d. A correspondence upon the subject of the attack and destruction of the steam-boat Caroline.

4th. A correspondence on the subject of impressment.

If this treaty shall receive the approbation of the Senate, it will terminate a difference respecting boundary which has long subsisted between the two governments, has been the subject of several ineffectual attempts at settlement, and has sometimes led to great irritation, not without danger of disturbing the existing peace. Both the United States and the states more immediately concerned have entertained no doubt of the validity of the American title to all the territory which has been in dispute; but that title was controverted, and the government of the United States had agreed to make the dispute a subject of arbitration. One arbitration had been actually had, but had failed to settle the controversy; and it was found, at the commencement of last year, that a correspondence had been in progress between the two governments for a joint commission, with an ultimate reference to an umpire or arbitrator, with authority to make a final decision. That correspondence, however, had been retarded by various occurrences, and had come to no definite result when the special mission of Lord Ashburton was announced. This movement on the part of England afforded, in the judgment of the executive, a favorable opportunity for making an attempt to settle this long-existing controversy by some agreement or treaty,

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without further reference to arbitration. It seemed entirely proper that, if this purpose were entertained, consultation should be had with the authorities of the States of Maine and Massachusetts. Letters, therefore, of which copies are herewith communicated, were addressed to the governors of those states, suggesting that commissioners should be appointed by each of them, respectively, to repair to this city and confer with the authorities of this government, on a line by agreement or compromise, with its equivalents and compensations. This suggestion was met by both states in a spirit of candor and patriotism, and promptly complied with. Four commissioners on the part of Maine, and three on the part of Massachusetts, all persons of distinction and high character, were duly appointed and commissioned, and lost no time in presenting themselves at the seat of the government of the United States. These commissioners have been in correspondence with this government during the period of the discussions; have enjoyed its confidence and freest communications; have aided the general object with their council and advice; and, in the end, have unanimously signified their assent to the line proposed in the treaty.

Ordinarily, it would be no easy task to reconcile and bring together such a variety of interests in a matter in itself difficult and perplexed; but the efforts of the government, in attempting to accomplish this desirable object, have been seconded and sustained by a spirit of accommodation and conciliation on the part of the states concerned, to which much of the success of these efforts is to be ascribed.

Connected with the settlement of the line of the northeastern boundary, so far as it respects the States of Maine and Massachusetts, is the continuation of that line along the Highlands to the northwesternmost head of Connecticut River. Which of the sources of that stream is entitled to this character has been matter of controversy, and is of some interest to the State of New Hampshire. The King of the Netherlands decided the main branch to be the northwesternmost head of the Connecticut. This did not satisfy the claim of New Hampshire. The line agreed to in the present treaty follows the Highlands to the head of Hall's Stream, and thence down that river, embracing the whole claim of New Hampshire, and establishing her title to 100,000 acres of territory more than she would have had by the decision of the King of the Netherlands.

By the treaty of 1783, the line is to proceed down the Connecticut River to the 45th degree of north latitude, and thence west, by that parallel, till it strikes the St. Lawrence. Recent examinations having ascertained that the line heretofore re-

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ceived as the true line of latitude between those points was erroneous, and that the correction of this error would not only leave, on the British side, a considerable tract of territory heretofore supposed to belong to the States of Vermont and New York, but also Rouse's Point, the site of a military work of the United States; it has been regarded as an object of importance, not only to establish the rights and jurisdiction of those states up to the line to which they have been considered to extend, but also to comprehend Rouse's Point within the territory of the United States. The relinquishment by the British government of all the territory south of the line heretofore considered to be the true line, has been obtained; and the consideration for this relinquishment is to enure, by the provisions of the treaty, to the States of Maine and Massachusetts.

The line of boundary, then, from the source of the St. Croix to the St. Lawrence, so far as Maine and Massachusetts are concerned, is fixed by their own consent, and for considerations satisfactory to them; the chief of these considerations being the privilege of transporting the lumber and agricultural products grown and raised in Maine on the waters of the St. John's and its tributaries down that river to the ocean, free from imposition or disability. The importance of this privilege, perpetual in its terms, to a country covered at present by pine forests of great value, and much of it capable hereafter of agricultural improvement, is not a matter upon which the opinion of intelligent men is likely to be divided.

So far as New Hampshire is concerned, the treaty secures all that she requires; and New York and Vermont are quieted to the extent of their claim and occupation. The difference which would be made in the northern boundary of these two states, by correcting the parallel of latitude, may be seen on Tanner's maps (1836), new atlas, maps Nos. 6 and 9.

From the intersection of the 45° of north latitude with the St. Lawrence, and along that river and the lakes to the water communication between Lake Huron and Lake Superior, the line was definitely agreed on by the commissioners of the two governments, under the 6th article of the Treaty of Ghent. But between this last-mentioned point and the Lake of the Wood, the commissioners acting under the 7th article of that treaty found several matters of disagreement, and therefore made no joint report to their respective governments. The first of these was Sugar Island, or St. George's Island, lying in St. Mary's River, or the water communication between Lakes Huron and Superior. By the present treaty this island is embraced in the territories of the United States. Both from soil and position, it is regarded as of much value.

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Another matter of difference was the manner of extending the line from the point at which the commissioners arrived, north of Isle Royale, in Lake Superior, to the Lake of the Woods. The British commissioner insisted on proceeding to Fond du Lac, at the southwest angle of the lake, and thence, by the River St. Louis, to the Rainy Lake. The American commissioner supposed the true course to be, to proceed by way of the Dog River. Attempts were made to compromise this difference, but without success. The details of these proceedings are found at length in the printed separate reports of the commissioners.

From the imperfect knowledge of this remote country at the date of the treaty of peace, some of the descriptions in that treaty do not harmonize with its natural features, as now ascertained. "Long Lake" is nowhere to be found under that name. There is reason for supposing, however, that the sheet of water intended by that name is the estuary at the mouth of Pigeon River. The present treaty, therefore, adopts that estuary and river, and afterward pursues the usual route, across the height of land by the various portages and small lakes, till the line reaches Rainy Lake; from which the commissioners agreed on the extension of it to its termination, in the northwest angle of the Lake of the Woods. The region of country on and near the shore of the lake, between Pigeon River on the north, and Fond du Lac and the River St. Louis on the south and west, considered valuable as a mineral region, is thus included within the United States. It embraces a territory of four millions of acres, northward of the claim set up by the British commissioner under the Treaty of Ghent. From the height of land at the head of Pigeon River, westerly to the Rainy Lake, the country is understood to be of little value, being described by surveyors, and marked on the map, as a region of rock and water.

From the northwest angle of the Lake of the Woods, which is found to be in latitude 45° 23′ 55″ north, existing treaties require the line to be run due south to its intersection with the 45th parallel, and thence along that parallel to the Rocky Mountains.

After sundry informal communications with the British minister upon the subject of the claims of the two countries to territory west of the Rocky Mountains, so little probability was found to exist of coming to any agreement on that subject at present that it was not thought expedient to make it one of the subjects of formal negotiation, to be entered upon between this government and the British minister, as part of his duties under his special mission.

By the treaty of 1783, the line of division along the rivers

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and lakes, from the place where the 45th parallel of north latitude strikes the St. Lawrence, to the outlet of Lake Superior, is invariably to be drawn through the middle of such waters, and not through the middle of their main channels. Such a line, if extended according to the literal terms of the treaty, would, it is obvious, occasionally intersect islands. The manner in which the commissioners of the two governments dealt with this difficult subject may be seen in their reports. But where the line, thus following the middle of the river, or water course, did not meet with islands, yet it was liable sometimes to leave the only practicable navigable channel altogether on one side. The treaty made no provision for the common use of the waters by the citizens and subjects of both countries.

It has happened, therefore, in a few instances, that the use of the river, in particular places, would be greatly diminished to one party or the other, if, in fact, there was not a choice in the use of channels and passages. Thus, at the Long Sault, in the St. Lawrence, a dangerous passage, practicable only for boats, the only safe run is between the Long Sault Islands and Barnhart's Island, all which belong to the United States on one side, and the American shore on the other. On the other hand, by far the best passage for vessels of any depth of water, from Lake Erie into the Detroit River, is between Bois Blanc, a British island, and the Canadian shore. So, again, there are several channels or passages, of different degrees of facility and usefulness, between several islands in the River St. Clair, at or near its entry into the lake of that name. In these three cases, the treaty provides that all the several passages and channels shall be free and open to the use of the citizens and subjects of both parties.

The treaty obligations subsisting between the two countries for the suppression of the African slave trade, and the complaints made to this government within the last three or four years, many of them but too well founded, of the visitation, seizure, and detention of American vessels on that coast by British cruisers, could not but form a delicate and highly important part of the negotiations which have now been held.

The early and prominent part which the government of the United States has taken for the abolition of this unlawful and inhuman traffic, is well known. By the tenth article of the Treaty of Ghent, it is declared that the traffic in slaves is irreconcilable with the principles of humanity and justice, and that both his majesty and the United States are desirous of continuing their efforts to promote its entire abolition; and it is thereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object. The government of the United States has, by law, declared

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the African slave trade piracy; and at its suggestion other nations have made similar enactments. It has not been wanting in honest and zealous efforts, made in conformity with the wishes of the whole country, to accomplish the entire abolition of the traffic in slaves upon the African coast; but these efforts and those of other countries directed to the same end have proved, to a considerable degree, unsuccessful. Treaties are known to have been entered into some years ago between England and France, by which the former power, which usually maintains a large naval force on the African station, was authorized to seize, and bring in for adjudication, vessels found engaged in the slave trade under the French flag.

It is known that in December last a treaty was signed in London by the representatives of England, France, Russia, Prussia, and Austria, having for its professed object a strong and united effort of the five powers to put an end to the traffic. This treaty was not officially communicated to the government of the United States, but its provisions and stipulations are supposed to be accurately known to the public. It is understood to be not yet ratified on the part of France.

No application or request has been made to this government to become party to this treaty; but the course it might take in regard to it has excited no small degree of attention and discussion in Europe, as the principle upon which it is founded, and the stipulations which it contains, have caused warm animadversions and great political excitement.

In my message at the commencement of the present session of Congress, I endeavored to state the principles which this government supports respecting the right of search and the immunity of flags. Desirous of maintaining those principles fully, at the same time that existing obligations should be fulfilled, I have thought it most consistent with the honor and dignity of the country, that it should execute its own laws, and perform its own obligations, by its own means and its own power. The examination or visitation of the merchant vessels of one nation by the cruisers of another, for any purpose, except those known and acknowledged by the law of nations, under whatever restraints or regulations it may take place, may lead to dangerous results. It is far better, by other means, to supersede any supposed necessity, or any motive, for such examination or visit. Interference with a merchant vessel by an armed cruiser is always a delicate proceeding, apt to touch the point of national honor, as well as to affect the interests of individuals. It has been thought, therefore, expedient, not only in accordance with the stipulations of the Treaty of Ghent, but at the same time as removing all pretext on the part of others for violating the immunities of the American flag upon the seas, as

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they exist and are defined by the law of nations, to enter into the articles now submitted to the Senate.

The treaty which I now submit to you proposes no alteration, mitigation, or modification of the rules of the law of nations. It provides simply that each of the two governments shall maintain on the coast of Africa a sufficient squadron to enforce, separately and respectively, the laws, rights, and obligations of the two countries for the suppression of the slave trade.

Another consideration of great importance has recommended this mode of fulfilling the duties and obligations of the country. Our commerce along the western coast of Africa is extensive, and supposed to be increasing. There is reason to think that, in many cases, those engaged in it have met with interruptions and annoyances, caused by the jealousy and instigation of rivals engaged in the same trade. Many complaints on this subject have reached the government. A respectable naval force on the coast is the natural resort and security against further occurrences of this kind.

The surrender to justice of persons who, having committed high crimes, seek an asylum in the territories of a neighboring nation, would seem to be an act due to the cause of general justice, and properly belonging to the present state of civilization and intercourse. The British provinces of North America are separated from the states of the Union by a line of several thousand miles; and along portions of this line the amount of population on either side is quite considerable, while the passage of the boundary is always easy.

Offenders against the law, on the one side, transfer themselves to the other. Sometimes, with great difficulty, they are brought to justice, but very often they wholly escape. A consciousness of immunity, from the power of avoiding justice in this way, instigates the unprincipled and reckless to the commission of offenses; and the peace and good neighborhood of the border are consequently often disturbed.

In the case of offenders fleeing from Canada into the United States, the governors of states are often applied to for their surrender; and questions of a very embarrassing nature arise from these applications. It has been thought highly important, therefore, to provide for the whole case by a proper treaty stipulation. The article on the subject in the proposed treaty is carefully confined to such offenses as all mankind agree to regard as heinous, and destructive of the security of life and property. In this careful and specific enumeration of crimes, the object has been to exclude all political offenses, or criminal charges, arising from wars or intestine commotions. Treason, misprision of treason, libels, desertion from military service, and other offenses of similar character, are excluded.

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And, lest some unforeseen inconvenience or unexpected abuse should arise from the stipulation, rendering its continuance, in the opinion of one or both of the parties, not longer desirable, it is left in the power of either to put an end to it at will.

The destruction of the steam-boat Caroline at Schlosser, four or five years ago, occasioned no small degree of excitement at the time, and became the subject of correspondence between the two governments. That correspondence having been suspended for a considerable period, was renewed in the spring of the last year, but, no satisfactory result having been arrived at, it was thought proper, though the occurrence had ceased to be fresh and recent, not to omit attention to it on the present occasion. It has only been so far discussed, in the correspondence now submitted, as it was accomplished by a violation of the territory of the United States. The letter of the British minister, while he attempts to justify that violation upon the ground of a pressing and overruling necessity, admitting, nevertheless, that, even if justifiable, an apology was due for it, and accompanying this acknowledgment with assurances of the sacred regard of his government for the inviolability of national territory, has seemed to me sufficient to warrant forbearance from any further remonstrance against what took place, as an aggression on the soil and territory of the country.

On the subject of the interference of the British authorities in the West Indies, a confident hope is entertained that the correspondence which has taken place, showing the grounds taken by this government, and the engagements entered into by the British minister, will be found such as to satisfy the just expectation of the people of the United States.

The impressment of seamen from merchant vessels of this country by British cruisers, although not practiced in time of peace, and, therefore, not at present a productive cause of difference and irritation, has, nevertheless, hitherto been so prominent a topic of controversy, and is so likely to bring on renewed contentions at the first breaking out of an European war, that it has been thought the part of wisdom now to take it into serious and earnest consideration. The letter from the Secretary of State to the British minister explains the grounds which the government has assumed, and the principles which it means to uphold. For the defense of these grounds, and the maintenance of these principles, the most perfect reliance is placed on the intelligence of the American people, and on their firmness and patriotism, in whatever touches the honor of the country, or its great and essential interest.

JOHN TYLER.

WASHINGTON, *August* 11, 1842.

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BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

[A PROCLAMATION.]

Whereas, a treaty between the United States of America and her majesty, the Queen of the United Kingdom of Great Britain and Ireland, was concluded and signed by their plenipotentiaries, at Washington, on the ninth day of August, one thousand eight hundred and forty-two, which treaty is, word for word, as follows:

A Treaty to settle and define the Boundaries between the Territories of the United States and the Possessions of her Britannic Majesty in North America: For the final Suppression of the African Slave Trade; and for the giving up of Criminals, fugitive from Justice, in certain Cases.

Whereas, certain portions of the line of boundary between the United States of America and the British dominions in North America, described in the second article of the Treaty of Peace of 1783, have not yet been ascertained and determined, notwithstanding the repeated attempts which have been heretofore made for that purpose; and whereas, it is now thought to be for the interest of both parties that, avoiding further discussion of their respective rights arising in this respect under the said treaty, they should agree on a conventional line in said portions of the said boundary, such as may be convenient to both parties, with such equivalents and compensations as are deemed just and reasonable; and whereas, by the treaty concluded at Ghent, on the 24th day of December, 1814, between the United States and his Britannic majesty, an article was agreed to and inserted, of the following tenor, viz.: "ARTICLE 10. Whereas the traffic in slaves is irreconcilable with the principles of humanity and justice; and whereas, both his majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object;" and whereas, notwithstanding the laws which have at various times been passed by the two governments, and the efforts made to suppress it, that criminal traffic is still prosecuted and carried on; and whereas, the United States of America and her majesty, the Queen of the United Kingdom of Great Britain and Ireland, are determined that, so far as may be in their power, it shall be effectually abolished; and whereas, it is found expedient for the better administration of justice, and the prevention of crime within the territories and jurisdiction of the two parties, respectively, that persons committing the crimes hereinafter enumerated, and being fugitives from justice, should, under

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certain circumstances, be reciprocally delivered up: the United States of America and her Britannic majesty, having resolved to treat on these several subjects, have for that purpose appointed their respective plenipotentiaries to negotiate and conclude a treaty; that is to say: the President of the United States has, on his part, furnished with full powers Daniel Webster, Secretary of State of the United States; and her majesty, the Queen of the United Kingdom of Great Britain and Ireland, has, on her part, appointed the Right Honorable Alexander Lord Ashburton, a peer of the said United Kingdom, a member of her majesty's most honorable privy council, and her majesty's minister plenipotentiary on a special mission to the United States, who, after a reciprocal communication of their respective full powers, have agreed to and signed the following articles:

ARTICLE I.

It is hereby agreed and declared that the line of boundary shall be as follows: Beginning at the monument at the source of the River St. Croix, as designated and agreed to by the commissioners under the fifth article of the treaty of 1794, between the governments of the United States and Great Britian; thence north, following the exploring line run and marked by the surveyors of the two governments in the years 1817 and 1818, under the fifth article of the Treaty of Ghent, to its intersection with the River St. John, and to the middle of the channel thereof; thence up the middle of the main channel of the said River St. John to the mouth of the River St. Francis; thence up the middle of the channel of the said River St. Francis, and of the lakes through which it flows, to the outlet of the Lake Pohenagamook; thence, southwesterly, in a straight line to a point on the northwest branch of the River St. John, which point shall be ten miles distant from the main branch of the St. John, in a straight line, and in the nearest direction; but if the said point shall be found to be less than seven miles from the nearest point of the summit, or crest, of the Highlands that divide those rivers which empty themselves into the River St. Lawrence from those which fall into the River St. John, then the said point shall be made to recede down the said northwest branch of the River St. John, to a point seven miles in a straight line from the said summit or crest; thence in a straight line, in a course about south, eight degrees west, to the point where the parallel of latitude of 46 degrees 25 minutes north intersects the southwest branch of the St. John's; thence, southerly, by the said branch, to the source thereof in the Highlands, at the Metjarmette Portage; thence down along the said Highlands which divide the waters which emp-

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ty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the head of Hall's Stream; thence down the middle of said stream, till the line thus run intersects the only line of boundary surveyed and marked by Valentine and Collins previously to the year 1774, as the 45th degree of north latitude, and which has been known and understood to be the line of actual division between the States of New York and Vermont on one side, and the British province of Canada on the other; and from said point of intersection, west, along the said dividing-line, as heretofore known and understood, to the Iroquois or St. Lawrence River.

ARTICLE II.

It is, moreover, agreed that from the place where the joint commissioners terminated their labors under the sixth article of the Treaty of Ghent, to wit: at a point in the Neebish Channel, near Muddy Lake, the line shall run into and along the ship-channel between St. Joseph's and St. Tammany Islands, to the division of the channel at or near the head of St. Joseph's Island; thence, turning eastwardly and northwardly, around the lower end of St. George's or Sugar Island, and following the middle of the channel which divides St. George's from St. Joseph's Island; thence up the east Neebish Channel, nearest to St. George's Island, through the middle of Lake George; thence, west of Jonas's Island, into St. Mary's River, to a point in the middle of that river, about one mile above St. George's or Sugar Island, so as to appropriate and assign the said island to the United States; thence, adopting the line traced on the maps by the commissioners, through the River St. Mary and Lake Superior, to a point north of Ile Royale, in said lake, one hundred yards to the north and east of Ile Chapeau, which last-mentioned island lies near the northeastern point of Ile Royale, where the line marked by the commissioners terminates; and from the last-mentioned point, southwesterly, through the middle of the sound between Ile Royale and the northwestern main-land, to the mouth of Pigeon River, and up the said river to and through the North and South Fowl Lakes, to the lakes of the height of land between Lake Superior and the Lake of the Woods; thence along the water communication to Lake Saisaginaga, and through that lake; thence to and through Cypress Lake, Lac du Bois Blanc, Lac la Croix, Little Vermilion Lake, and Lake Namecan, and through the several smaller lakes, straits, or streams connecting the lakes here mentioned, to that point in Lac la Pluie, or Rainy Lake, at the Chaudière Falls, from which the commissioners traced the line to the most northwestern point of the Lake of the Woods; thence along the said line to the

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said most northwestern point, being in latitude 49 degrees, 23 minutes, 55 seconds north, and in longitude 95 degrees, 14 minute, 38 seconds west from the observatory at Greenwich; thence, according to existing treaties, due south, to its intersection with the 49th parallel of north latitude, and along that parallel to the Rocky Mountains; it being understood that all the water communications, and all the usual portages along the line from Lake Superior to the Lake of the Woods, and also Grand Portage, from the shore of Lake Superior to the Pigeon River, as now actually used, shall be free and open to the use of the citizens and subjects of both countries.

ARTICLE III.

In order to promote the interests and encourage the industry of all the inhabitants of the countries watered by the River St. John and its tributaries, whether living within the State of Maine or the province of New Brunswick, it is agreed that where, by the provisions of the present treaty, the River St. John is declared to be the line of boundary, the navigation of the said river shall be free and open to both parties, and shall in no way be obstructed by either; that all the produce of the forest in logs, lumber, timber, boards, staves, or shingles, or of agriculture, not being manufactured, grown on any of those parts of the State of Maine watered by the River St. John, or by its tributaries, of which fact reasonable evidence shall, if required, be produced, shall have free access into and through the said river and its said tributaries, having their source within the State of Maine, to and from the sea-port at the mouth of the said River St. John, and to and round the falls of the said river, either by boats, rafts, or other conveyance; that when within the province of New Brunswick, the said produce shall be dealt with as if it were the produce of the said province; that in like manner the inhabitants of the territory of the Upper St. John, determined by this treaty to belong to her Britannic majesty, shall have free access to and through the river for their produce, in those parts where the said river runs wholly through the State of Maine: *Provided always*, That this agreement shall give no right to either party to interfere with any regulations not inconsistent with the terms of this treaty which the governments, respectively, of Maine or of New Brunswick may make respecting the navigation of the said river, where both banks thereof shall belong to the same party.

ARTICLE IV.

All grants of lands heretofore made by either party, within the limits of the territory which by this treaty falls within the

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dominions of the other party, shall be held valid, ratified, and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made: and all equitable possessory claims, arising from a possession and improvement of any lot or parcel of land by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty, shall, in like manner, be deemed valid, and be confirmed and quieted by a release to the person entitled thereto, of the title to such lot or parcel of land, so described as best to include the improvements made thereon; and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them, respectively, which has heretofore been in dispute between them.

ARTICLE V.

Whereas, in the course of the controversy respecting the disputed territory on the northeastern boundary, some moneys have been received by the authorities of her Britannic majesty's province of New Brunswick, with the intention of preventing depredations on the forests of the said territory, which moneys were to be carried to a fund, called the "Disputed Territory Fund," the proceeds whereof, it was agreed, should be hereafter paid over to the parties interested, in the proportions to be determined by a final settlement of boundaries: it is hereby agreed, that a correct account of all receipts and payments on the said fund shall be delivered to the government of the United States, within six months after the ratification of this treaty; and the proportion of the amount due thereon to the States of Maine and Massachusetts, and any bonds or securities appertaining thereto, shall be paid and delivered over to the government of the United States; and the government of the United States agrees to receive for the use of, and pay over to, the States of Maine and Massachusetts, their respective portions of said fund; and further, to pay and satisfy said states, respectively, for all claims for expenses incurred by them in protecting the said heretofore disputed territory, and making a survey thereof in 1838; the government of the United States agreeing with the States of Maine and Massachusetts to pay them the further sum of three hundred thousand dollars, in equal moieties, on account of their assent to the line of boundary described in this treaty, and in consideration of the conditions and equivalents received therefor, from the government of her Britannic majesty.

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ARTICLE VI.

It is furthermore understood and agreed, that for the purpose of running and tracing those parts of the line between the source of the St. Croix and the St. Lawrence River, which will require to be run and ascertained, and for marking the residue of said line by proper monuments on the land, two commissioners shall be appointed, one by the President of the United States, by and with the advice and consent of the Senate thereof, and one by her Britannic majesty; and the said commissioners shall meet at Bangor, in the State of Maine, on the first day of May next, or as soon thereafter as may be, and shall proceed to mark the line above described, from the source of the St. Croix to the River St. John; and shall trace on proper maps the dividing line along said river, and along the River St. Francis, to the outlet of the Lake Pohenagamook; and from the outlet of the said lake they shall ascertain, fix, and mark, by proper and durable monuments on the land, the line described in the first article of this treaty; and the said commissioners shall make to each of their respective governments a joint report or declaration, under their hands and seals, designating such line of boundary, and shall accompany such report or declaration with maps certified by them to be true maps of the new boundary.

ARTICLE VII.

It is further agreed, that the channels in the River St. Lawrence, on both sides of the Long Sault Islands, and of Barnhart Island; the channels in the River Detroit, on both sides of the Island Bois Blanc, and between that island and both the American and Canadian shores; and all the several channels and passages between the various islands lying near the junction of the River St. Clair, with the lake of that name, shall be equally free and open to the ships, vessels, and boats of both parties.

ARTICLE VIII.

The parties mutually stipulate that each shall prepare, equip, and maintain in service, on the coast of Africa, a sufficient and adequate squadron, or naval force of vessels, of suitable numbers and descriptions, to carry in all not less than eighty guns, to enforce, separately and respectively, the laws, rights, and obligations of each of the two countries, for the suppression of the slave trade; the said squadrons to be independent of each other, but the two governments stipulating, nevertheless, to give such orders to the officers commanding their respective forces, as shall enable them most effectually to act in concert

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and co-operation, upon mutual consultation, as exigencies may arise, for the attainment of the true object of this article; copies of all such orders to be communicated by each government to the other, respectively.

ARTICLE IX.

Whereas, notwithstanding all efforts which may be made on the coast of Africa for suppressing the slave trade, the facilities for carrying on that traffic and avoiding the vigilance of cruisers by the fraudulent use of flags, and other means, are so great, and the temptations for pursuing it, while a market can be found for slaves, so strong, as that the desired result may be long delayed, unless all markets be shut against the purchase of African negroes, the parties to this treaty agree that they will unite in all becoming representations and remonstrances with any and all powers within whose dominions such markets are allowed to exist; and that they will urge upon all such powers the propriety and duty of closing such markets effectually, at once and forever.

ARTICLE X.

It is agreed that the United States and her Britannic majesty shall, upon mutual requisitions by them, or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, committed within the jurisdiction of either, shall seek an asylum, or shall be found, within the territories of the other: provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed; and the respective judges and other magistrates of the two governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

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ARTICLE XI.

The eighth article of this treaty shall be in force for five years from the date of the exchange of the ratifications, and afterward until one or the other party shall signify a wish to terminate it. The tenth article shall continue in force until one or the other of the parties shall signify its wish to terminate it, and no longer.

ARTICLE XII.

The present treaty shall be duly ratified, and the mutual exchange of ratifications shall take place in London, within six months from the date hereof, or earlier, if possible.

In faith whereof, we, the respective plenipotentiaries, have signed this treaty, and have hereunto affixed our seals.

Done, in duplicate, at Washington, the ninth day of August, anno Domini one thousand eight hundred and forty-two.

DANL. WEBSTER. [SEAL.]
ASHBURTON. [SEAL.]

And, whereas, the said treaty has been duly ratified on both parts, and the respective ratifications of the same having been exchanged, to wit, at London, on the thirteenth day of October, one thousand eight hundred and forty-two, by Edward Everett, Envoy Extraordinary and Minister Plenipotentiary of the United States, and the Right Honorable the Earl of Aberdeen, her Britannic majesty's principal Secretary of State for Foreign Affairs, on the part of their respective governments:

Now, therefore, be it known, that I, John Tyler, President of the United States of America, have caused the said treaty to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof. In witness [L. S.] whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this tenth day of November, in the year of our Lord one thousand eight hundred and forty-two, and of the Independence of the United States the sixty-seventh.

JOHN TYLER.

By the President:
DANIEL WEBSTER, *Secretary of State.*

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VOTE OF THE SENATE ON THE FINAL QUESTION OF RATIFICATION, &c.

The treaty having been communicated to the Senate by the President of the United States, by message of the 11th of August, 1842, was referred, on motion of Mr. Rives, to the Committee on Foreign Relations, of which committee Mr. Rives was chairman; it was reported from the committee without amendment on Monday, the 15th of August, and made the order of the day for Wednesday, the 17th, on which last day it was called up and discussed, as well as on the 19th and 20th. Several propositions to amend having been made and rejected, Mr. Rives, on the day last mentioned, submitted the following resolution:

Resolved (two thirds of the senators present concurring), That the Senate advise and consent to the ratification of the treaty to settle and define the boundaries between the territories of the United States and the possessions of her Britannic majesty in North America; for the final suppression of the African slave trade; and for the giving up of criminals fugitive from justice, in certain cases.

The Senate, by unanimous consent, proceeded to consider the said resolution. On the question to agree thereto, it was determined in the affirmative, Yeas 39, Nays 9.

Those who voted in the affirmative are, Messrs Archer, Barrow, Bates, Bayard, Berrien, Calhoun, Choate, Clayton, Crafts, Crittenden, Cuthbert, Dayton, Evans, Fulton, Graham, Henderson, Huntington, Kerr, King, Mangum, Merrick, Miller, Morehead, Phelps, Porter, Preston, Rives, Sevier, Simmons, Smith of Indiana, Sprague, Tallmadge, Tappan, Walker, White, Woodbridge, Woodbury, Wright, Young.

Those who voted in the negative are, Messrs. Allen, Bagby, Benton, Buchanan, Conrad, Linn, Smith of Connecticut, Sturgeon, Williams.

So the said resolution was agreed to.

Ordered, That the Secretary lay the said resolution before the President of the United States.

The bill for carrying into effect the Treaty of Washington passed the House of Representatives on the 28th of February, 1843, by a vote of 137 Yeas to 40 Nays, and the Senate on the 2d of March, without a division, having been reported from the Committee on Foreign Relations by Mr. Archer, then chairman of that committee, without amendment.

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MR. WEBSTER'S SPEECH IN THE SENATE OF THE UNITED STATES, APRIL, 1846, IN VINDICATION OF THE TREATY OF WASHINGTON OF 1842.

It is altogether unexpected to me, Mr. President, to find it to be my duty here, and at this time, to defend the Treaty of Washington of 1842, and the correspondence accompanying the negotiation of that treaty. It is a past transaction. Four years have almost elapsed since the treaty received the sanction of the Senate and became the law of the land. While before the Senate, it was discussed with much earnestness and very great ability. For its ratification, it received the votes of five sixths of the whole Senate: a greater majority, I believe I may say, than was ever before found for any disputed treaty. From that day to this, although I had had a hand in the negotiation of the treaty, and felt it to be a transaction with which my own reputation was intimately connected, I have been willing to leave it to the judgment of the country. There were, it is true, sir, some things of which I have not complained, and do not complain, but which, nevertheless, were subjects of regret. The papers accompanying the treaty were voluminous. Their publication was long delayed, waiting for the exchange of ratifications; and, when finally published, they were not distributed to any great extent, or in large numbers. The treaty, meantime, got before the public surreptitiously, and, with the documents, came out by piece-meal. We know that it is unhappily true that, away from the large commercial cities of the Atlantic coast, there are few of the public prints of the country which publish official papers on such an occasion, at large. I might have felt a natural desire that the treaty and the correspondence could have been known and read by every one of my fellow-citizens, from east to west, and from north to south. Indeed, I did feel such desire. But it was impossible. Nevertheless, in returning to the Senate again, nothing was further from my purpose than to renew the discussion of any of the topics discussed and settled at that time; and nothing further from my expectation than to be called upon, by any sense of duty to my own reputation and to truth, to make, now, any observations upon the treaty or the correspondence.

But it has so happened that, in the debate on the Oregon question, the treaty, and, I believe, every article of it, and the correspondence accompanying the negotiation of that treaty, and, I believe, every part of that correspondence, have been the subject of disparaging, disapproving, sometimes contumelious

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remarks, in one or the other of the houses of Congress. Now, with all my indisposition to revive past transactions and make them the topics of debate here, and satisfied, and, indeed, highly gratified with the approbation so very generally expressed by the country, at the time and ever since, I suppose that it could hardly have been expected, nevertheless, by any body, that I should sit here from day to day, through the debate, and through the session, hearing statements entirely errroneous as to matters of fact, and deductions from these supposed facts quite as erroneous, all tending to produce unfavorable impressions respecting the treaty, and the correspondence, and every body who had a hand in it: I say, it could hardly have been expected by any one that I should sit here and hear all this, and keep my peace. The country knows that I am here. It knows what I have heard, again and again, from day to day; and if statements of fact, wholly incorrect, are made here, in my hearing and in my presence, without reply or answer from me, why, shall we not hear in all the contests of party and elections hereafter, that this is a fact, and that is a fact, because it has been stated where and when an answer could be given, or a denial made, and no answer was given, and no denial made? It is my purpose, therefore, to give an answer here, and now, to whatever has been alleged against the treaty or the correspondence.

Mr. President, in the negotiation of 1842, and in the correspondence, I acted as Secretary of State, under the direction, of course, of the President of the United States. But, sir, in matters of high importance, I shrink not from the responsibility of any thing I have ever done, under any man's direction. Wherever my name stands I am ready to answer to it, and to defend that with which it is connected. I am here to-day to take upon myself, without disrespect to the chief magistrate under whose direction I acted, and for the purposes of this discussion, the whole responsibility of every thing that has my name connected with it in the negotiation and correspondence. Sir, the Treaty of Washington was not entered into to settle any—or altogether for the purpose of settling any—new arising questions. The matters embraced in that treaty, and in the correspondence accompanying it, had been interesting subjects in our foreign relations for fifty years—unsettled for fifty years—agitating and annoying the councils of the country, and threatening to disturb its peace, for fifty years. And my first duty, then, in entering upon such remarks as I think the occasion calls for in regard to one and all of these topics, will be to treat the subjects, in the first place, historically; to show when each arose; what has been its progress in the diplomatic history of the country; and especially to show in what posture each of those important subjects stood at the time

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when William Henry Harrison acceded to the office of President of the United States. This is my purpose. I do not intend to enter upon any crimination of gentlemen who have filled important situations in the executive government in the earlier, or in the more recent, history of the country; but I intend to show, in the progress of this discussion, the actual position in which things were left in regard to the topics embraced by the treaty, and the correspondence attending the negotiation of it, when the executive government devolved upon General Harrison, and his immediate successor, Mr. Tyler.

Now, sir, the first of these topics is the question of the northeastern boundary of the United States. The general history of that question, from the peace of 1783 to this time, is known to all public men, of course, and pretty well understood by the great mass of well-informed persons throughout the country. I shall state it briefly.

In the Treaty of Peace of September, 1783, the northern and eastern, or, perhaps, more properly speaking, the northeastern boundary of the United States, is thus described, viz.:

"From the northwest angle of Nova Scotia, viz., that angle which is formed by a line drawn due north from the source of the St. Croix River to the Highlands; along the said Highlands, which divide those rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic Ocean, to the northwesternmost head of Connecticut River; thence along the middle of that river to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the River Iroquois or Cataraquy; east by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy, to its source, and from its source directly north to the aforesaid Highlands."

Such is the description of the northeastern boundary of the United States, according to the Treaty of Peace of 1783. And it is quite remarkable that so many embarrassing questions should have arisen from these few lines, and have been matters of controversy for more than half a century.

The first disputed question was, "Which, of the several rivers running into the Bay of Fundy, is the St. Croix, mentioned in the treaty?" It is singular that this should be matter of dispute, but so it was. England insisted the true St. Croix was one river; the United States insisted it was another.

The second controverted question was, "Where is the northwest angle of Nova Scotia to be found?"

The third, "What and where are the Highlands, along which the line is to run, from the northwest angle of Nova Scotia to the northwesternmost head of Connecticut River?"

The fourth, "Of the several streams which, flowing together, make up Connecticut River, which is that stream which ought to be regarded as its northwesternmost head?"

The fifth was, "Are the rivers which discharge their waters into the Bay of Fundy, rivers 'which fall into the Atlantic Ocean,' in the sense of the terms used in the treaty?"

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The 5th article of the treaty between the United States and Great Britain, of the 19th of November, 1794, after reciting that "doubts had arisen what river was truly intended under the name of the River St. Croix," proceeded to provide for the decision of that question by three commissioners, one to be appointed by each government, and these two to choose a third; or, if they could not agree, then each to make his nomination, and decide the choice by lot. The two commissioners agreed on a third; the three executed the duty assigned them, decided what river was the true St. Croix, traced it to its source, and there established a monument. So much, then, on the eastern line was settled; and all the other questions remained wholly unsettled down to the year 1842.

But the two governments continued to pursue the important and necessary purpose of adjusting boundary difficulties; and a convention was negotiated in London by Mr. Rufus King and Lord Hawkesbury, and signed on the 12th day of May, 1803, by the 2d and 3d articles of which it was agreed that a commission should be appointed, in the same manner as that provided for under the treaty of 1794, to wit: one commissioner to be appointed by England, and one by the United States, and these two to make choice of a third; or, if they could not agree, each to name the person he proposed, and the choice to be decided by lot; this third commissioner, whether appointed by choice or by lot, would, of course, be umpire or ultimate arbiter.

Governments at that day, in disputes concerning territorial boundaries, did not set out each with the declaration that the whole of its own claim was clear and indisputable; whatever was seriously disputed they regarded as in some degree, at least, doubtful or disputable; and when they could not agree, they saw no indignity or impropriety in referring the dispute to arbitration, even though the arbitrator were to be appointed by chance, between respectable persons, named severally by the parties.

The commission thus constituted was authorized to ascertain and determine the northwest angle of Nova Scotia; to run and mark the line from the monument, at the source of St. Croix, to that northwest angle of Nova Scotia; and also to determine the northwesternmost head of Connecticut River; and then to run and mark the boundary line between the northwest angle of Nova Scotia and the said northwesternmost head of Connecticut River; and the decision and proceedings of the said commissioners, or a majority of them, was to be final and conclusive.

No objection was made by either government to this agreement and stipulation; but an incident arose to prevent the final

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ratification of this treaty, and it arose in this way. Its fifth article contained an agreement between the parties settling the line of boundary between them beyond the Lake of the Woods. In coming to this agreement, they proceeded exclusively on the grounds of their respective rights under the treaty of 1783; but it so happened that, twelve days before the convention was signed in London, France, by a treaty signed in Paris, had ceded Louisiana to the United States. This cession was at once regarded as giving to the United States new rights, or new limits, in this part of the Continent. The Senate, therefore, struck this 5th article out of the convention; and, as England did not incline to agree to this alteration, the whole convention fell.

Here, sir, the whole matter rested till it was revived by the Treaty of Ghent, in the year 1814. And by the 5th article of that treaty it was provided, that each party should appoint a commissioner, and those two should have power to ascertain and determine the boundary line, from the source of the St. Croix to the St. Lawrence River, according to the treaty of 1783; and if these commissioners could not agree, they were to state their grounds of difference, and the subject was to be referred to the arbitration of some friendly sovereign or state, to be afterward agreed upon by the two governments. The two commissioners examined the boundary, explored the country, but could not agree.

In the year 1823, under the administration of Mr. Monroe, negotiations were commenced with a view of agreeing on an arbitration, and these negotiations terminated in a convention, which was signed in London, on the 29th of September, 1827, in the administration of Mr. Adams. By this time, collisions had already begun on the borders, notwithstanding it had been understood that neither party should exercise exclusive possession pending the negotiation. Mr. Adams, in his message of December 8, 1827, after stating the conclusion of the convention for arbitration, adds:

"While these conventions have been pending, incidents have occurred of conflicting pretensions, and of a dangerous character, upon the territory itself in dispute between the two nations. By a common understanding between the governments, it was agreed that no exercise of exclusive jurisdiction by either party, while the negotiaton was pending, should change the state of the question of right to be definitely settled. Such collision has, nevertheless, recently taken place by occurrences the precise character of which has not yet been ascertained."

The King of the Netherlands was appointed arbitrator, and he made his award on the 10th of January, 1831. This award was satisfactory to neither party; it was rejected by both, and so the whole matter was thrown back upon its original condition.

This happened in the first term of General Jackson's admin-

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istration. He immediately addressed himself, of course, to new efforts for the adjustment of the controversy. His energy and diligence have both been much commended by his friends; and they have not been disparaged by his opponents. He called to his aid, in the Department of State, successively, Mr. Van Buren, Mr. Livingston, Mr. M'Lane, and Mr. Forsyth.

Now, Mr. President, let us see what progress General Jackson made, with the assistance of these able and skillful negotiators, in this highly important business. Why, sir, the whole story is told by reference to his several annual messages. In his fourth annual message, December, 1832, he says: "The question of our northeasthern boundary still remains unsettled." In December, 1833, he says: "The interesting question of our northeastern boundary remains still undecided. A negotiation, however, upon that subject has been renewed since the close of the last Congress." In December, 1834, he says: "The question of the northeastern boundary is still pending with Great Britain, and the proposition made in accordance with the resolution of the Senate, for the establishment of a line according to the treaty of 1783, has not been accepted by that government. Believing that every disposition is felt on both sides to adjust this perplexing question to the satisfaction of all the parties interested in it, the hope is yet indulged that it may be effected on the basis of that proposition." In December, 1835, a similar story is rehearsed: "In the settlement of the question of the northeastern boundary," says President Jackson, "little progress has been made. Great Britain has declined acceding to the proposition of the United States, presented in accordance with the resolution of the Senate, unless certain preliminary conditions are admitted, which I deemed incompatible with a satisfactory and rightful adjustment of the controversy." And in his last message, the President gives an account of all his efforts, and all his success, in regard to this most important point in our foreign relations, in these words: "I regret to say, that many questions of an interesting nature, at issue with other powers, are yet unadjusted; among the most prominent of these is that of the northeastern boundary. With an undiminished confidence in the sincere desire of his Britannic majesty's government to adjust that question, I am not yet in possession of the precise grounds upon which it proposes a satisfactory adjustment."

With all his confidence, so often repeated, in the sincere desire of England to adjust the dispute, with all the talents and industry of his successive cabinets, this question, admitted to be the most prominent of all those on which we were at issue with foreign powers, had not advanced one step since the rejection of the Dutch award; nor did General Jackson know the

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grounds upon which a satisfactory adjustment was to be expected. All this is undeniably true; and it was all admitted to be true by Mr. Van Buren when he came into office; for, in his first annual message, he says:

"Of pending questions the most important is that which exists with the government of Great Britain in respect to our northeastern boundary. It is with unfeigned regret that the people of the United States must look back upon the abortive efforts made by the executive for a period of more than half a century, to determine what no nation should suffer long to remain in dispute, the true line which divides its possessions from those of other powers. The nature of the settlements on the borders of the United States, and of the neighboring territory, was for a season such, that this, perhaps, was not indispensable to a faithful performance of the duties of the Federal government. Time has, however, changed the state of things, and has brought about a condition of affairs in which the true interests of both countries imperatively require that this question should be put at rest. It is not to be disguised that, with full confidence, often expressed in the desire of the British government to terminate it, we are apparently as far from its adjustment as we were at the time of signing the treaty of peace, 1783." * * *

"The conviction, which must be common to all, of the injurious consequences that result from keeping open this irritating question, and the certainty that its final settlement can not be much longer deferred, will, I trust, lead to an early and satisfactory adjustment. At your last session, I laid before you the recent communications between the two governments, and between this government and that of the State of Maine, in whose solicitude, concerning a subject in which she has so deep an interest, every portion of the Union participates."

Now, sir, let us pause and consider this. Here we are, fifty-three years from the date of the Treaty of Peace, and the boundaries not yet settled. General Jackson has tried his hand at the business for five years, and has done nothing. He can not make the thing move. And why not? Do he and his advisers want skill and energy, or are there difficulties in the nature of the case, not to be overcome till some wiser course of proceeding shall be adopted? Up to this time not one step of progress has been made. This is admitted, and is, indeed, undeniable.

Well, sir, Mr. Van Buren then began his administration under the deepest conviction of the importance of the question, in the fullest confidence in the sincerity of the British government, and with the consciousness that the solicitude of Maine concerning the subject was a solicitude in which every portion of the Union participated.

And now, sir, what did he do? What did he accomplish? What progress did he make? What step forward did he take in the whole course of his administration? Seeing the full importance of the subject, addressing himself to it, and not doubting the just disposition of England, I ask again, what did he do? What did he do? What advance did he make? Sir, not one step, in his whole four years. Or, rather, if he made any advance at all, it was an advance backward; for, undoubtedly, he left the question in a much worse state than he found it, not only on account of the disturbances and outbreaks which had taken place on the border, for the want of an adjust-

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ment, and which disturbances themselves had raised new and difficult questions, but on account of the intricacies, and complexities, and perplexities in which the correspondence had become involved. There was a mesh, an entanglement, which rendered it far more difficult to proceed with the subject than if the question had been fresh and unembarrassed.

I must now ask the Senate to indulge me in something more of an extended and particular reference to proofs and papers than is in accordance with my general habits in debate; because I wish to present to the Senate, and to the country, the grounds of what I have just said.

And let us follow the administration of Mr. Van Buren from his first message, and see how this important matter fares in his hands.

On the 20th of March, 1838, he sent a message to the Senate, with a correspondence between Mr. Fox and Mr. Forsyth. In this correspondence Mr. Fox says:

"The United States government have proposed two modes in which such a commission might be constituted: first, that it might consist of commissioners, named in equal numbers, by each of the two governments, with an umpire to be selected by some friendly European power. Secondly, that it might be entirely composed of scientific Europeans, to be selected by a friendly sovereign, and might be accompanied in its operations by agents of the two different parties, in order that such agents might give to the commissioners assistance and information.

* * * * * * * * *

"Her majesty's government have themselves already stated that they have little expectation that such a commission could lead to any useful result, and that they would on that account be disposed to object to it; and if her majesty's government were now to agree to appoint such a commission, it would only be in compliance with the desire so strongly expressed by the government of the United States, and in spite of doubts, which her majesty's government still continue to entertain, of the efficacy of the measure."

To this Mr. Forsyth replies, that he perceives, with feelings of deep disappointment, that the answer to the propositions of the United States is so indefinite, as to render it impracticable to ascertain, without further discussion, what are the real wishes and intentions of her majesty's government. Here, then, a new discussion arises, to find out, if it can be found out, what the parties mean. Meantime Mr. Forsyth writes a letter, of twenty or thirty pages, to the Governor of Maine, concluding with a suggestion that his excellency should take measures to ascertain the sense of the State of Maine with respect to the expediency of a conventional line. This correspondence repeats the proposition of a joint exploration by commissioners, and Mr. Fox accedes to it, in deference to the wishes of the United States, but with very little hope that any good will come of it.

Here is the upshot of one whole year's work. Mr. Van Buren sums it up thus, in his message of December, 1838:

"With respect to the northeastern boundary of the United States, no official correspondence between this government and that of Great Britain has passed

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since that communicated to Congress toward the close of their last session. The offer to negotiate a convention for the appointment of a joint commission of survey and exploration, I am, however, assured, will be met by her majesty's government in a conciliatory and friendly spirit, and instructions to enable the British minister here to conclude such an arrangement will be transmitted to him without needless delay."

We may now look for instructions to Mr. Fox to conclude an arrangement for a joint commission of survey and exploration. Survey and exploration! As if there had not already been enough of both! But thus terminates 1838, with a hope of coming to an agreement for a survey! Great progress, this, surely!

And now we come to 1839; and what, sir, think you, was the product of diplomatic fertility and cultivation in the year 1839? Sir, the harvest was one *project* and one *counter*-project.

On the 20th of May Mr. Fox sent to Mr. Forsyth a draught of a convention for a joint exploration by commissioners, the commissioners to make report to their respective governments.

This was the British *project.*

On the 29th of July Mr. Forsyth sent to Mr. Fox a *counter-project*, embracing the principle of arbitration. By this, if the commissioners did not agree, a reference was to be had to three persons, selected by three friendly sovereigns or states; and these arbitrators might order another survey. Here the parties, apparently fatigued with their efforts, paused; and the labors of the year are thus rehearsed and recapitulated by Mr. Van Buren at the end of the season:

"For the settlement of our northeastern boundary, the proposition promised by Great Britain for a commission of exploration and survey has been received, and a counter-project, including also a provision for the certain and final adjustment of the limits in dispute, is now before the British government for its consideration. A just regard to the delicate state of this question, and a proper respect for the natural impatience of the State of Maine, not less than a conviction that the negotiation has been already protracted longer than is prudent on the part of either government, have led me to believe that the present favorable moment should, on no account, be suffered to pass without putting the question forever at rest. I feel confident that the government of her Britannic majesty will take the same view of the subject, as I am persuaded it is governed by desires equally strong and sincere for the amicable termination of the controversy."

Here, sir, in this "delicate state of the question" all things rested till the next year.

Early after the commencement of the warm weather, in 1840, the industrious diplomatists resumed their severe and rigorous labors, and on the 22d of June, 1840, Mr. Fox writes thus to Mr. Forsyth:

"The British government and the government of the United States agreed, two years ago, that a survey of the disputed territory by a joint commission would be the measure best calculated to elucidate and solve the question at issue. The President proposed such a commission, and her majesty's government consented to it; and it was believed by her majesty's government that the general principles upon which the commission was to be guided in its local operations had been settled by mutual agreement, arrived at by means of a correspondence which took place between the two governments in 1837 and 1838. Her majesty's govern-

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ment accordingly transmitted, in April of last year, for the consideration of the President, a draught of the convention, to regulate the proceedings of the proposed convention."

"The preamble of that draught recited, textually, the agreement that had been come to by means of notes which had been exchanged between the two governments; and the articles of the draught were framed, as her majesty's government considered, in strict conformity with that agreement.

"But the government of the United States did not think proper to assent to the convention so proposed.

"The United States government did not, indeed, allege that the proposed convention was at variance with the result of the previous correspondence between the two governments; but it thought that the convention would establish a commission of 'mere exploration and survey;' and the President was of opinion that the step next to be taken by the two governments should be to contract stipulations, bearing upon the face of them the promise of a final settlement, under some form or other, and within a reasonable time.

"The United States government accordingly transmitted to the undersigned, for communication to her majesty's government, in the month of July last, a counter-draught of convention, varying considerably in some parts (as the Secretary of State of the United States admitted in his letter to the undersigned of the 29th of July last) from the draught proposed by Great Britain."

* * * * * * *

"There was, undoubtedly, one essential difference between the British draught and the American counter-draught.

"The British draught contained no provision embodying the principle of arbitration. The American counter-draught did contain such a provision.

"The British draught contained no provision for arbitration, because the principle of arbitration had not been proposed on either side during the negotiations upon which that draught was founded; and because, moreover, it was understood at that time that the principle of arbitration would be decidedly objected to by the United States. But as the United States government have now expressed a wish to embody the principle of arbitration in the proposed convention, her majesty's government are perfectly willing to accede to that wish.

"The undersigned is accordingly instructed to state officially to Mr. Forsyth, that her majesty's government consent to the two principles which form the main foundation of the American counter-draught, namely: first, that the commission to be appointed shall be so constituted as necessarily to lead to a final settlement of the questions of boundary at issue between the two countries; and, secondly, that, in order to secure such a result, the convention by which the commission is to be created shall contain a provision for arbitration upon points as to which the British and American commission may not be able to agree.

"The undersigned is, however, instructed to add, that there are many matters of detail in the American counter-draught which her majesty's government can not adopt.

"The undersigned will be furnished from his government, by an early opportunity, with an amended draught, in conformity with the principles above stated, to be submitted to the consideration of the President. And the undersigned expects to be at the same time furnished with instructions to propose to the government of the United States a fresh, local, and temporary convention, for the better prevention of incidental border collisions within the disputed territory during the time that may be occupied in carrying through the operation of survey or arbitration."

And on the 26th of June Mr. Forsyth replies, and says:

"That he derives great satisfaction from the announcement that her majesty's government do not relinquish the hope that the sincere desire which is felt by both parties to arrive at an amicable settlement, will at length be attended with success; and from the prospect held out by Mr. Fox of his being accordingly furnished, by an early opportunity, with the draught of a proposition amended in conformity with the principles to which her majesty's government has acceded, to be submitted to the consideration of this government."

On the 28th of July, 1840, the British amended draught came.

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This draught proposed that commissioners should be appointed, as before, to make exploration; that umpires or arbitrators should be appointed by three friendly sovereigns, and that the arbitration should sit in Germany, at Frankfort-on-the-Maine. And the draught contains many articles of arrangement and detail for carrying the exploration and arbitration into effect.

At the same time, Mr. Fox sends to Mr. Forsyth the report of two British commissioners, Messrs. Mudge and Featherstonhaugh, who had made an *ex parte* survey in 1839. And a most extraordinary report it was. These gentlemen had discovered that up to that time nobody had been right. They invented a new line of highland, cutting across the waters of the Aroostook, and other streams emptying into the St. John's, which, in all previous examinations and explorations, had escaped all mortal eyes.

Here, then, we had one *project* more for exploration and arbitration, together with a report from the British commissioners of survey, placing the British claim where it had never been placed before. And on the 13th of August, there comes again, as matter of course, from Mr. Forsyth, another *counter-project*. Lord Palmerston is never richer in *projects* than Mr. Forsyth is in *counter-projects*. There is always a Roland for an Oliver. This *counter-project* of the 13th of August, 1840, was drawn in the retirement of Albany. It consists of 18 articles, which it is hardly necessary to describe particularly. Of course, it proceeds on the two principles already agreed on, of exploration and arbitration; but in all matters of arrangement and detail, it was quite different from Lord Palmerston's draught, communicated by Mr. Fox.

And here the rapid march of diplomacy came to a dead halt. Mr. Fox found so many, and such great changes proposed to the British draught, that he did not incline to discuss them. He did not believe the British government would ever agree to Mr. Forsyth's plan, but he would send it home, and see what could be done with it.

Thus stood matters at the end of 1840, and in his message at the meeting of Congress in December of that year, his valedictory message, Mr. Van Buren thus describes that condition of things, which he found to be the result of his four years of negotiation.

"In my last annual message you were informed that a proposition for a commission of exploration and survey, promised by Great Britain, had been received, and that a counter-project, including also a provision for the certain and final adjustment of the limits in dispute, was then before the British government for its consideration. The answer of that government, accompanied by additional propositions of its own, was received through its minister here, since your separation. These were promptly considered; such as were deemed correct in principle, and consistent with a due regard to the just rights of the United States and of the State of Maine, concurred in; and the reasons for dissenting from the residue,

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with an additional suggestion on our part, communicated by the Secretary of State to Mr. Fox. That minister, not feeling himself sufficiently instructed upon some of the points raised in the discussion, felt it to be his duty to refer the matter to his own government for its further decision."

And now, sir, who will deny that this is a very promising condition of things to exist FIFTY-SEVEN years after the conclusion of the treaty!

Here is the British project for exploration; then the American counter-project for exploration, to be the foundation of arbitration. Next, the answer of Great Britain to our counter-project, stating divers exceptions and objections to it, and with sundry new and additional propositions of her own. Some of these were concurred in, but others dissented from, and other additional suggestions on our part were proposed; and all these concurrences, dissents, and new suggestions were brought together and incorporated into Mr. Forsyth's last labor of diplomacy, at least his last labor in regard to this subject, his counter-project of August the 13th, 1840. That counter-project was sent to England, to see what Lord Palmerston could make of it. It fared in the Foreign Office just as Mr. Fox had foretold. Lord Palmerston would have nothing to do with it. He would not answer it; he would not touch it; he gave up the negotiation in apparent despair. Two years before, the parties had agreed on the principle of joint exploration; and the principle of arbitration. But in their subsequent correspondence, on matters of detail, modes of proceeding, and subordinate arrangements, they had, through the whole two years, constantly receded further, and further, and further from each other. They were flying apart; and, like two orbs, going off in opposite directions, could only meet after they should have traversed the whole circle.

But this exposition of the case does not describe, by any means, all the difficulties and embarrassments arising from the unsettled state of the controversy. We all remember the troubles of 1839. Something like a border war had broke out. Maine had raised an armed *civil posse;* she fortified the line, or points on the line, of territory, to keep off intruders and to defend possession. There was Fort Fairfield, Fort Kent, and I know not what other fortresses, all memorable in history. The Legislature of Maine had placed eight hundred thousand dollars at the discretion of the governor, to be used for the military defense of the state. Major-general Scott had repaired to the frontier, and under his mediation an agreement, a sort of treaty, respecting the temporary possession of the two parties, of the territory in dispute, was entered into between the governors of Maine and New Brunswick. But as it could not be foreseen how long the principal dispute would be protracted, Mr. Fox, as has already been seen, wrote home for instructions

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for another treaty: a treaty of less dignity; a collateral treaty; a treaty to regulate the terms of possession, and the means of keeping the peace of the frontier, while the number of years should roll away, necessary, first, to spin out the whole thread of diplomacy in forming a convention; next, for three or four years of joint exploration of seven hundred miles of disputed boundary in the wilderness of North America; and, finally, to learn the results of an arbitration which was to sit at Frankfort-on-the-Maine, composed of learned doctors from the German universities.

Really, sir, is not this a most delightful prospect? Is there not here as beautiful a labyrinth of diplomacy as one could wish to look at of a summer's day? Would not Castlereagh and Talleyrand, Nesselrode and Metternich, find it an entanglement worthy the labor of their own hands to unravel? Is it not apparent, Mr. President, that at this time the settlement of the question, by this kind of diplomacy, if to be reached by any vision, required telescopic sight? The country was settling; individual rights were getting into collision; it was impossible to prevent disputes and disturbances; every consideration required, that whatever was to be done should be done quickly; and yet every thing, thus far, had waited the sluggish flow of the current of diplomacy. *Labitur et labetur.*

I have already stated, that on the receipt of Mr. Forsyth's last counter-plan, or counter-project, Lord Palmerston, at last, paused. He did so. The British government appears to have made up its mind that nothing was to be expected, at that time, from pursuing further this battle-door play of *projets* and *contré-projets*. What occurred in England, we collect from the published debates of the House of Commons. From these we learn, that after General Harrison's election, and, indeed, after his death, and in the first year of Mr. Tyler's Presidency, Lord Palmerston wrote to Mr. Fox as follows:

"Her majesty's government received, with very great regret, the second American counter-draught of a convention for determining the boundary between the United States and the British North American provinces, which you transmitted to me last autumn, in your dispatch of the 15th of August, 1840, because that counter-draught contained so many inadmissible propositions, that it plainly showed that her majesty's government could entertain no hope of concluding any arrangement on this subject with the government of Mr. Van Buren, and that there was no use in taking any farther steps in the negotiations till the new President should come into power. Her majesty's government had certainly been persuaded that a draught which, in pursuance of your instruction, you presented to Mr. Forsyth on the 28th of July, 1840, was so fair in its provision, and so well calculated to bring the differences between the two governments about the boundary to a just and satisfactory conclusion, that it would have been at once accepted by the government of the United States; or that if the American government had proposed to make any alterations in it, those alterations would have related merely to matters of detail, and would not have borne upon any essential points of the arrangement; and her majesty's government were the more confirmed in this hope, because almost all the main principles of the arrangement

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which that draught was intended to carry into execution had, as her majesty's government conceived, been either suggested by, or agreed to by, the United States government itself."

Lord Palmerston is represented to have said, in this dispatch of Mr. Forsyth's counter-project, that he "can not agree" to the preamble; that he "can not consent" to the second article; that he "must object to the fourth article;" that the "seventh article imposed incompatible duties;" and to every article there was an objection, stated in a different form, until he reached the tenth, and that, as to that, "none could be more inadmissible."

This was the state of the negotiation a few days before Lord Palmerston's retirement. But, nevertheless, his lordship would make one more attempt, now that there was a new administration here, and he would make "*new proposals.*" And what were they?

"And what does the House think," said Sir Robert Peel, in the House of Commons, "were the noble lord's proposals in that desperate state of circumstances? The proposal of the noble lord, after fifty-eight years of controversy, submitted by him to the American government for the purpose of a speedy settlement, was, that commissioners should be nominated on both sides; that they should attempt to make settlement of this long-disputed question; and then, if that failed, that the King of Prussia, the King of Sardinia, and the King of Saxony were to be called in, not to act as umpires, but they were each to be requested to name a scientific man, and that these three members of a scientific commission should proceed to arbitrate. Was there ever a proposition like this suggested for the arrangement of a question on which two countries had differed for fifty-eight years? And this, too, was proposed after the failure of the arbitration on the part of the King of Holland, and when they had had their commission of exploration in vain. And yet, with all this, there were to be three scientific men, foreign professors: one from Prussia, one from Sardinia, and one from Saxony! To do what? And where were they to meet? or how were they to come to a satisfactory adjustment?"

It was asked in the House of Commons, not inaptly, what would the people of Maine think, when they should read that they were to be visited by three learned foreigners, one from Prussia, one from Saxony, and one from Sardinia? To be sure; what would they think, when they should see three learned foreign professors, each speaking a different language, and none of them the English or American tongue, among the swamps and morasses of Maine, in summer, or wading through its snows in winter; on the Allagash, the Macadavie, or among the moose deer, on the precipitous and lofty shores of Lake Pohenagamook—and for what? To find where the division was between Maine and New Brunswick! Instructing themselves, by these labors, that they might repair to Frankfort-on-the-Maine, and there hold solemn and scientific arbitration on the question of a boundary line in one of the deepest wildernesses of North America!

Sir, I do not know what might have happened if this project had gone on. Possibly, sir, but that your country has called

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you to higher duties, you might now have been at Frankfort-on-the-Maine, the advocate of our cause before the scientific arbitration. If not yourself, some one of the honorable members here very probably would have been employed in attempting to utter the almost unspeakable names, bestowed by the northeastern Indians on American lakes and streams, in the heart of Germany.

Mr. Fox, it is said, on reading his dispatch, replied, with characteristic promptitude and good sense, "for God's sake save us from the philosophers! Have sovereigns, if you please, but no professional men."

But Mr. Fox was instructed, as it now appears, to renew his exertions to carry forward the arbitration. "Let us," said Lord Palmerston, in writing to him, "let us consider the American *contré-projet* as unreasonable, undeserving of answer, as withdrawn from consideration, and now submit my original *projet* to Mr. Webster, the new Secretary of State, and persuade him it is reasonable."

With all respect, sir, to Lord Palmerston, Mr. Webster was not to be so persuaded; that is to say, he was not persuaded that it was reasonable, or wise, or prudent to pursue the negotiation, in this form, further. He hoped to live long enough to see the northeastern boundary settled; but that hope was faint, unless he could rescue the question from the labyrinth of projects and counter-projects, explorations and arbitration, in which it was involved. He could not reasonably expect that he had another whole half century of life before him.

Mr. President, it is true that I viewed the case as hopeless without an entire change in the manner of proceeding. I found the parties already "in wandering mazes lost." I found it quite as tedious and difficult to trace the thread of this intricate negotiation, as it would be to run out the line of the Highlands itself. One was quite as full as the other of deviations, abruptnesses, and perplexities. And having received the President's (Mr. Tyler's) authority, I did say to Mr. Fox, as has been stated in the British Parliament, that I was willing to attempt to settle the dispute by agreeing on a conventional line, or line by compromise.

Mr. President, I was fully aware of the difficulty of the undertaking. I saw it was a serious affair to call on Maine to come into an agreement by which she might subject herself to the loss of territory which she regarded as clearly her own. The question touched her proprietary interests, and, what was more delicate, it touched the extent of her jurisdiction. I knew well her extreme jealousy and high feeling on this point.* But

* It is now well known that in 1832 an agreement was entered into between

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I believed in her patriotism, and in her willingness to make sacrifices for the good of the country. I trusted, too, that her own good sense would lead her, while she, doubtless, preferred the strict execution of the treaty, as she understood it, to any line by compromise, to see, nevertheless, that the government of the United States was already pledged to arbitration by its own proposition and the agreement of Great Britain; that this arbitration might not be concluded and finished for many years, and that, after all, the result might be doubtful. With this reliance on the patriotism and good sense of Maine, and with the sanction of the President, I was willing to make an effort to establish a boundary by direct compromise and agreement; by acts of the parties themselves, which they could understand and judge of for themselves; by a proceeding which left nothing to the future judgment of others, and by which the controversy could be settled in six months. And, sir, I leave it to the Senate to-day, and the country always, to say, how far this offer and this effort were wise or unwise, statesman-like or unstatesman-like, beneficial or injurious.

Well, sir, in the autumn of 1841, it was known in England to be the opinion of the American government that it was not advisable to prosecute further the scheme of arbitration; that that government was ready to open a negotiation for a conventional line of boundary; and a letter from Mr. Everett, dated on the 31st of December, announced the determination of the British government to send a special minister to the United States, authorized to settle all matters in difference, and the selection of Lord Ashburton for that trust. This letter was answered, on the 29th of January, by an assurance that Lord Ashburton would be received with the respect due to his government and to himself. Lord Ashburton arrived in Washington on the 4th of April, 1842, and was presented to the President on the 6th.

On the 11th, a letter was written from the Department of State to the Governor of Maine, announcing his arrival, and his declaration that he had authority to treat for a conventional line of boundary, or line by agreement, on mutual conditions, considerations, and equivalents.

The Governor of Maine was informed that,

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some of the heads of departments at Washington, viz., Messrs. Livingston, M'Lane, and Woodbury, under the direction of President Jackson, on the part of the United States, and Messrs. Preble, Williams, and Emery, on the part of the government of Maine, by which it was stipulated that Maine should surrender to the United States the territory which she claimed beyond the line designated by the King of the Netherlands, and receive as an indemnity ONE MILLION of acres of the public lands, to be selected by herself in Michigan. The existence of this *treaty* was not known for some time, and it was never ratified by the high contracting parties.

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"Under these circumstances, the President had felt it to be his duty to call the serious attention of the governments of Maine and Massachusetts to the subject, and to submit to those governments the propriety of their co-operation, to a certain extent, and in a certain form, in an endeavor to terminate a controversy already of so long duration, and which seems very likely to be still considerably further protracted before the desired end of a final adjustment shall be attained, unless a shorter course of arriving at that end be adopted than such as has heretofore been pursued, and as the two governments are still pursuing.

"The opinion of this government upon the justice and validity of the American claim has been expressed at so many times, and in so many forms, that a repetition of that opinion is not necessary. But the subject is a subject in dispute. The government has agreed to make it a matter of reference and arbitration; and it must fulfill that agreement, unless another mode of settling the controversy should be resorted to with the hope of producing a speedier decision. The President proposes, then, that the governments of Maine and Massachusetts should severally appoint a commissioner or commissioners, empowered to confer with the authorities of this government upon a conventional line, or line by agreement, with its terms, conditions, considerations, and equivalents, with an understanding that no such line will be agreed upon without the assent of such commissioners.

"This mode of proceeding, or some other which shall express assent beforehand, seems indispensable, if any negotiation for a conventional line is to be had; since, if happily a treaty should be the result of the negotiation, it can only be submitted to the Senate of the United States for ratification."

A similar letter was addressed to the Governor of Massachusetts. The Governor of Maine, now an honorable member of this House, immediately convoked the Legislature of Maine by proclamation. In Massachusetts the probable exigency had been anticipated, and the Legislature had authorized the governor, now my honorable colleague here, to appoint commissioners on behalf of the commonwealth. The Legislature of Maine adopted resolutions to the same effect, and duly elected four commissioners from among the most eminent persons in the state, of all parties; and their unanimous consent to any proposed line of boundary was made indispensable. Three distinguished public men, known to all parties, and having the confidence of all parties, in any question of this kind, were appointed commissioners by the Governor of Massachusetts.

Now, sir, I ask, could any thing have been devised fairer, safer, and better for all parties than this? The states were here, by their commissioners; Great Britain was here, by her special minister; and the Canadian and New Brunswick authorities within reach of the means of consultation; and the government of the United States was ready to proceed with the important duties it had assumed. Sir, I put the question to any man of sense, whether, supposing the real object to be a fair, just, convenient, prompt settlement of the boundary dispute, this state of things was not more promising than all the schemes of exploration and arbitration, and all the tissue of projects and counter-projects with which the two governments had been making themselves strenuously idle for so many years? Nor was the promise not fulfilled.

It has been said, absurdly enough, that Maine was coerced into a consent to this line of boundary. What was the coer-

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cion? Where was the coercion? On the one hand, she saw an immediate and reasonable settlement; on the other hand, a proceeding sure to be long, and its result seen to be doubtful. Sir, the coercion was none other than the coercion of duty, good sense, and manifest interest. The right and the expedient united, to compel her to give up the wrong, the useless, the inexpedient.

Maine was asked to judge for herself, to decide on her own interests, not unmindful, nevertheless, of those patriotic considerations which should lead her to regard the peace and prosperity of the whole country. Maine, it has been said, was persuaded to part with a portion of territory by this agreement. Persuaded! Why, sir, she was invited here to make a compromise—to give and to take; to surrender territory of very little value for equivalent advantages, of which advantages she was herself to be the uncontrolled judge. Her commissioners needed no guardians. They knew her interest. They knew what they were called on to part with, and the value of what they could obtain in exchange. They knew especially that on one hand was immediate settlement, on the other, ten or fifteen years more of delay and vexation. Sir, the piteous tears shed for Maine in this respect are not her own tears. They are the crocodile tears of pretended friendship and party sentimentality. Lamentations and griefs have been uttered in this Capitol about the losses and sacrifices of Maine, which nine tenths of the people of Maine laugh at. Nine tenths of her people, to this day, heartily approve the treaty. It is my full belief that there are not at this moment fifty respectable persons in Maine who would now wish to see the treaty annulled, and the state replaced in the condition in which it was, with Mr. Van Buren's arbitration before it, and inevitably fixed upon it, by the plighted faith of this government, on the 4th of March, 1841.

Sir, the occasion called for the revision of a very long line of boundary; and what complicated the case, and rendered it more difficult, was, that the territory on the side of the United States belonged to no less than four different states. The establishment of the boundary was to affect Maine, New Hampshire, Vermont, and New York. All these states were to be satisfied, if properly they could be. Maine, it is true, was principally concerned. But she did not expect to retain all that she called her own, and yet get more; and still call it compromise, and an exchange of equivalents. She was not so absurd. I regret some things which occurred; particularly that while the commissioners of Maine assented, unanimously, to the boundary proposed, on the equivalents proposed, yet, in the paper in which they express that assent, they seem to argue against the act which they were about to perform. This,

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I think, was a mistake. It had an awkward appearance, and probably gave rise to whatever of dissatisfaction has been expressed in any quarter.

And now, sir, I am prepared to ask whether the proceeding adopted, that is, an attempt to settle this long controversy by the assent of the states concerned, was not wise and discreet, under the circumstances of the case? Sir, the attempt succeeded, and it put an end to a controversy which had subsisted, with no little inconvenience to the country, and danger to its peace, through every administration, from that of General Washington to that of Mr. Van Buren. It is due to truth, and to the occasion, to say, that there were difficulties and obstacles in the way of this settlement, which had not been overcome under the administration of Washington, or the elder Adams, or Mr. Jefferson, or Mr. Madison, or Mr. Monroe, or Mr. J. Q. Adams, or General Jackson, or Mr. Van Buren. In 1842, in the administration of Mr. Tyler, the dispute was settled, and settled satisfactorily.

Sir, whatever may be said to the contrary, Maine was no loser, but an evident gainer by this adjustment of boundary. She parted with some portion of her territory; this I would not undervalue; but certainly most of it was quite worthless. Captain Talcot's report, and other evidence, sufficiently establish that fact.

Maine having, by her own free consent, agreed to part with this portion of territory, received, in the first place, from the Treasury of the United States, $150,000 for her half of the land, a sum which I suppose to be much greater than she would have realized from the sale of it in fifty years. No person, well informed on the subject, can doubt this.

In the next place, the United States government paid her for the expenses of her *civil posse* to defend the state, and also for the surveys. On this account she has already received $200,000, and hopes to receive 80 or 100,000 dollars more. If this hope shall be realized, she will have received $450,000 in cash.

But Maine, I admit, did not look, and ought not to have looked, to the treaty as a mere pecuniary bargain. She looked at other things besides money. She took into consideration that she was to enjoy the free navigation of the River St. John. I thought this a great object at the time the treaty was made; but I had then no adequate conception of its real importance. Circumstances which have since taken place show that its advantages to the state are far greater than I then supposed. That river is to be free to the citizens of Maine for the transportation down its stream of all unmanufactured articles whatever. Now, what is this River St. John? We have heard a vast deal lately of the immense value and importance of the

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River Columbia and its navigation; but I will undertake to say that, for all purposes of human use, the St. John's is worth a hundred times as much as the Columbia is, or ever will be. In point of magnitude, it is one of the most respectable rivers on the eastern side of this part of America. It is longer than the Hudson, and as large as the Delaware. And, moreover, it is a river which has a mouth to it, and that, in the opinion of the member from Arkansas (Mr. SEVIER), is a thing of some importance in the matter of rivers. [A laugh.] It is navigable from the sea, and by steam-boats, to a greater distance than the Columbia. It runs through a good country, and its sources afford a communication with the Aroostook Valley. And I will leave it to the members from Maine to say whether that valley is not one of the finest and most fertile parts of the state. And I will leave it not only to him, but to any man at all acquainted with the facts, whether this free navigation of the St. John's has not at once greatly raised the value of the lands on Fish River, on the Allegash, Madawasca, and the St. Francis. That whole region has no other outlet, and the value of the lumber which has, during this very year, been floated down that river, is far greater than that of all the furs which have descended from Fort Vancouver to the Pacific. On this subject I am enabled to speak with authority, for it has so happened that, since the last adjournment of the Senate, I have looked at an official return of the Hudson's Bay Company, showing the actual extent of the fur trade in Oregon, and I find it to be much less than I had supposed. An intelligent gentleman from Missouri estimated the value of that trade, on the west of the Rocky Mountains, at $300,000 annually; but I find it stated in the last publication by Mr. M'Gregor, of the board of trade in England (a very accurate authority), that the receipts of the Hudson's Bay Company for furs west of the Rocky Mountains, in 1828, is placed at $138,000. I do not know, though the member from Missouri is likely to know, whether all these furs are brought to Fort Vancouver; or whether some of them are not sent through the passes in the mountains to Hudson's Bay; or to Montreal, by the way of the north shore of Lake Superior. I suppose this last to be the case. It is stated, however, by the same authority, that the amount of goods received at Vancouver, and disposed of in payment for furs, is $20,000 annually, and no more.

Now, sir, this right to carry lumber, and grain, and cattle to the mouth of the River St. John, on equal terms with the British, is a matter of great importance; it brings lands lying on its upper branches, far in the interior, into direct communication with the sea. Those lands are valuable for timber now, and a portion of them are the best in the state for agriculture.

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The fact has been stated to me on the best authority, that in the Aroostook Valley land is to be found which has yielded more than forty bushels of wheat to the acre, even under the common cultivation of new countries. I must, therefore, think that the commissioners from Maine were quite right in believing that this was an important acquisition for their state, and one worth the surrender of some acres of barren mountains and impenetrable swamps.

But, Mr. President, there is another class of objections to this treaty boundary on which I wish to submit a few remarks. It has been alleged that the Treaty of Washington ceded very important military advantages on this Continent to the British government. One of these is said to be a military road between the two provinces of New Brunswick and Lower Canada; and the other is the possession of certain heights, well adapted, as is alleged, to military defense. I think the honorable member from New York, furthest from the chair (Mr. Dix), said, that by the Treaty of Washington a military road was surrendered to England, which she considered as of vital importance to her possessions in America.

Mr. Dix rose to explain. He had not spoken of a "military *road*," but of a portion of territory affording a means of military communication between two of her provinces.

Mr. Webster. Well, it is the same thing, and we will see how that matter stands. The honorable member says that he said a means of military communication, and not a military road. I am not a military man, and therefore may not so clearly comprehend, as that member does, the difference between a military road and a means of military communication [a laugh]; but I will read from the honorable member's speech, which I have before me, understood to have been revised by himself. The honorable member says:

"The settlement of the northeastern boundary—one of the most delicate and difficult that has ever arisen between us—affords a striking evidence of our desire to maintain with her the most friendly understanding. We ceded to her a portion of territory which she deemed of vital importance as a means of military communication between the Canadas and her Atlantic provinces, and which will give her a great advantage in a contest with us. The measure was sustained by the constituted authorities of the country, and I have no desire or intention to call its wisdom in question. But it proves that we were not unwilling to afford Great Britain any facility she required for consolidating her North American possessions: acting in peace as though war was not to be expected between the two countries. If we had cherished any ambitious designs in respect to them; if we had had any other wish than that of continuing on terms of amity with her and them, this great military advantage would never have been conceded to her.

"On the other hand, I regret to say that her course toward us has been a course of perpetual encroachment. But, sir, I will not look back upon what is past for the purpose of reviving disturbing recollections."

I should be very glad if the honorable gentleman would show how England derives so highly important benefits from the

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treaty in a military point of view, or what proof there is that she so considers the matter.

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Mr. Dix said that this treaty had been proclaimed by the President in the latter part of the year 1842. Mr. Dix had at that time left the country. The injunction of secrecy had been removed from the proceedings of the Senate in regard to the ratification. Although temporarily absent from the country, Mr. Dix had not lost sight of the state of things at home. He read with interest the debates in the British House of Parliament in regard to the treaty, and he was struck with the fact (and the debates would bear him out in the statement) that distinguished public men deemed the acquisition of territory which had been gained to be one of vital importance as a means of connection and communication between their provinces in America. As to a military road, he had never traced its course upon the map; but he believed that it passed along the east bank of the St. John's until that river turned westward, and then along its north bank toward Quebec. But by the award of the King of Holland, the road would have had to run quite round the head of the River St. Francis. By that award our boundary was to pass over the range of highlands, far to the north, and near the St. Lawrence River. But by the Treaty of Washington, the line leaves those heights, and was so thrown back as to pass several miles further to the eastward. He had some notes here of the debates in Parliament, and, as the gentleman had called upon him for his proof, Mr. Dix would read a few extracts. Here Mr. Dix read sundry extracts from debates in the House of Commons, and said he thought they sustained his position. But he desired to say that he had raised no question touching the wisdom of the provisions of the treaty, or made any reflections either on those who negotiated the treaty, or on those who ratified it.

Mr. Webster proceeded. The passages which the honorable member has read, however pertinent they may be to another question, do not touch the question immediately before us. I understand quite well what was said of the heights; but nobody, so far as I know, ever spoke of this supposed military road or military communication as of any importance at all, unless it be in a remark, not very intelligible, in an article ascribed to Lord Palmerston.

I was induced to refer to this subject, sir, by a circumstance which I have not long been apprised of. Lord Palmerston (if he be the author of certain publications ascribed to him) says that all the important points were given up by Lord Ashburton to the United States. I might here state, too, that Lord Palmerston called the whole treaty "the Ashburton capitulation," declaring that it yielded every thing that was of importance to

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Great Britain, and that all its stipulations were to the advantage of the United States, and to the sacrifice of the interests of England. But it is not on such general statements, and such unjust statements, nor on any off-hand expressions used in debate, though in the roundest terms, that this question must turn. He speaks of this military road, but he entirely misplaces it. The road which runs from New Brunswick to Canada follows the north side of the St. John's to the mouth of the Madawasca, and then turning northwest, follows that stream to Lake Temisquota, and thence proceeds over a depressed part of the highlands till it strikes the St. Lawrence one hundred and seventeen miles below Quebec. This is the road which has been always used, and there is no other.

I admit, it is very convenient for the British government to possess territory through which they may enjoy a road; it is of great value as an avenue of communication in time of peace; but, as a military communication, it is of no value at all. What business can an army ever have there? Besides, it is no gorge, no pass, no narrow defile, to be defended by a fort. If a fort should be built there, an army could, at pleasure, make a detour so as to keep out of the reach of its guns. It is very useful, I admit, in time of peace. But does not every body know, military man or not, that unless there is a defile, or some narrow place through which troops must pass, and which a fortification will command, that a mere open road must, in time of war, be in the power of the strongest? If we retained the road by treaty, and war came, would not the English take possession of it if they could? Would they be restrained by a regard to the Treaty of Washington? I have never yet heard a reason adduced why this communication should be regarded as the slightest possible advantage in a military point of view.

But the circumstance, which I have not long known, is, that, by a map published with the speech of the honorable member from Missouri, made in the Senate, on the question of ratifying the treaty, this well-known and long-used road is laid down, probably from the same source of error which misled Lord Palmerston, as following the St. John's, on its south side, to the mouth of the St. Francis; thence along that river to its source, and thence, by a single bound, over the highlands, to the St. Lawrence, near Quebec. This is all imagination. It is called the "Valley Road." Valley Road, indeed! Why, sir, it is represented as running over the very ridge of the most inaccessible part of the highlands! It is made to cross abrupt and broken precipices 2000 feet high! It is, at different points of its imaginary course, from fifty to a hundred miles distant from the real road. All this road is mere imagination. So much, Mr. President, for the great boon of military communication

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conceded to England. The truth is, there is nothing more nor less than a common road, along streams and lakes, and over a country in great part rather flat. It then passes the heights to the St. Lawrence. If war breaks out, we shall take it if we can, and if we need it, of which there is not the slightest probability. It will never be protected by fortifications, and never can be. It will be just as easy to take it from England in case of war, as it would be to keep possession of it if it were our own.

In regard to the defense of the heights, I shall dispose of that subject in a few words. There is a ridge of highlands which does approach the River St. Lawrence, although it is not true that they overlook Quebec; on the contrary, the ridge is at the distance of thirty or forty miles from Quebec.

It is very natural that military men in England, or, indeed, in any part of Europe, should have attached great importance to these mountains. The great military authority of England —perhaps the highest living military authority—had served in India and on the European continent, and it was natural enough that he should apply European ideas of military defenses to America. But they are quite inapplicable. Highlands such as these were not ordinarily found on the great battle-fields of Europe. They are neither Alps nor Pyrenees; they have no passes through them, nor roads over them, and never will have. Then there was another reason. In 1839 an *ex parte* survey was made, as I have said, by Colonel Mudge and Mr. Featherstonhaugh, if survey it could be called, of the region in the north of Maine, for the use of the British government. I dare say Colonel Mudge is an intelligent and respectable officer; how much personal attention he gave the subject I do not know. As to Mr. Featherstonhaugh, he has been in our service, and his authority is known to be not worth a straw. These two persons made a report containing this very singular statement: That, in the ridge of highlands nearest the St. Lawrence, there was a great *hiatus* in one particular place, a gap of thirty or forty miles, in which the elevation did not exceed fifty feet. This was certainly the strangest statement that ever was made.* Their whole report gave but one measurement by the barometer, and that measurement stated the height of 1200 feet. A survey and map were made the following year by our own commissioners, Messrs. Graham and Talcot, of the Topographical Corps, and Professor Renwick, of Columbia College. On this map, the very spot where this gap was said to be situated is dotted over thickly with figures, showing heights varying from 1200 to 2000 feet, and forming one rough and lofty ridge,

* See page 44 of their printed report. This pretended *hiatus* in the chain of highlands is included in the space A B in the accompanying map.

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marked by abrupt and almost perpendicular precipices. When this map and report of Messrs. Mudge and Featherstonhaugh were sent to England, the British authorities saw that this alleged gap was laid down as an indefensible point, and it was probably on that ground alone that they desired a line east of that ridge, in order that they might guard against access of a hostile power from the United States. But, in truth, there is no such gap, not at all; our engineers proved this, and we quite well understood it when agreeing to the boundary. Any man of common sense, military or not, must, therefore, now see that nothing can be more imaginary or unfounded than the idea that any importance could attach to the possession of these heights.

Sir, there are two old and well-known roads to Canada, one by way of Lake Champlain and the Richelieu to Montreal. This is the route which armies have traversed so often, in different periods of our history. The other leads from the Kennebec River to the sources of the Chaudière and the Du Loup, and so to Quebec. This last was the track of Arnold's march. East of this, there is no practicable communication for troops between Maine and Canada till we get to the Madawasca. We had before us a report from General Wool, while this treaty was in negotiation, in which that intelligent officer declares that it is perfectly idle to think of fortifying any point east of this road. East of Arnold's track it is a mountain region, through which no army can possibly pass into Canada. With General Wool was associated, in this examination, Major Graham, whom I have already mentioned. His report to General Wool, made in the year 1838, clearly points out the Kennebec and Chaudière road as the only practicable route for an army between Maine and Quebec. He was subsequently employed as a commissioner in the *ex parte* surveys on the part of the United States. Being an engineer officer of high character for military knowledge and scientific accuracy, his opinion had the weight it ought to have, and which will be readily given to it by all who know him. His subsequent and still more thorough acquaintance with this mountain range in its whole extent has only confirmed the judgment which he had previously formed. And, sir, this avenue to Canada, this practicable avenue, and only practicable avenue east of that by way of Lake Champlain, is left now just as it was found by the treaty. The treaty does not touch it, nor in any manner affect it at all.

But I must go further. I said that the Treaty of Washington was a treaty of equivalents, in which it was expected that each party should give something and receive something. And I am now willing to meet any gentleman, be he a military man or not, who will make the assertion that, in a military point of view, the greatest advantages derived from that treaty were

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on the side of Great Britain. It was on this point that I wished to say something in reply to an honorable member from New York (Mr. Dickinson), who will have it that in this treaty England supposes that she got the advantage of us. Sir, I do not think the military advantages she obtained by it are worth a rush. But even if they were—if she had obtained advantages of the greatest value—would it not have been fair in the member from New York to state, nevertheless, whether there were not equivalent military advantages obtained on our side, in other parts of the line? Would it not have been candid and proper in him, when adverting to the military advantage obtained by England, in a communication between New Brunswick and Canada, if such advantages there were, to have stated, on the other hand, and at the same time, the regaining by us of Rouse's Point, at the outlet of Lake Champlain? an advantage which overbalanced all others, forty times told. I must be allowed to say that I certainly never expected that a member from New York, above all other men, should speak of this treaty as conferring military advantages on Great Britain without full equivalents. I listened to it, I confess, with utter astonishment. A distinguished member from that state (Mr. Wright) saw, at the time, very clearly the advantage gained by this treaty to the United States and to New York. He voted willingly for its ratification, and he never will say that Great Britain obtained a balance of advantages in a military point of view.

Why, how is the State of New York affected by this treaty? Sir, is not Rouse's Point perfectly well known, and admitted, by every military man, to be the key of Lake Champlain? It commands every vessel passing up or down the lake between New York and Canada. It had always been supposed that this point lay some distance south of the parallel of 45, which was our boundary line with Canada, and, therefore, was within the United States; and, under this supposition, the United States purchased the land, and commenced the erection of a strong fortress. But a more accurate survey having been made in 1818, by astronomers on both sides, it was found that the parallel of 45 ran south of this fortress, and thus Rouse's Point, with the fort upon it, was found to be in the British dominions. This discovery created, as well it might, a great sensation here. None knows this better than the honorable member from South Carolina (Mr. Calhoun), who was then at the head of the Department of War. As Rouse's Point was no longer ours, we sent our engineers to examine the shores of the lake, to find some other place or places which we might fortify. They made a report on their return, saying that there were two other points, some distance south of Rouse's Point, one called Windmill Point, on the east side of the lake, and the

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other called Stony Point, on the west side, which it became necessary now to fortify, and they gave an estimate of the probable expense. When this treaty was in process of negotiation, we called for the opinion of military men respecting the value of Rouse's Point, in order to see whether it was highly desirable to obtain it. We had their report before us, in which it was stated that the natural and best point for the defense of the outlet of Lake Champlain was Rouse's Point. In fact, any body might see that this was the case who would look at the map. The point projects into the narrowest passage by which the waters of the lake pass into the Richelieu. Any vessel, passing into or out of the lake, must come within point-blank range of the guns of a fortress erected on this point; and it ran out so far that any such vessel must approach the fort, head on, for several miles, so as to be exposed to a raking fire from the battery, before she could possibly bring her broadside to bear upon the fort at all. It was very different with the points further south. Between them the passage was much wider; so much so, indeed, that a vessel might pass directly between the two, and not be in reach of point-blank shot from either.

Mr. Dickinson, of New York, here interposed to ask a question. Did not the Dutch line give us Rouse's Point?

Mr. Webster. Certainly not. It gave us a little semicircular line running round the fort, but not including what we had possessed before. And, besides, we had rejected the Dutch line, and the whole point now clearly belonged to England. It was all within the British territory. Does the gentleman understand me now?

Mr. Dickinson. Oh, yes, I understand you now, and I understood you before.

Mr. Webster. I am glad he does. [A laugh.] I was saying that a vessel might pass between the two points, Windmill Point and Stony Point, and escape point-blank shot from either. Meanwhile, her broadside could be brought to bear upon either of them. The forts would be entirely independent of each other, and, having no communication, could not render each other the least assistance in case of attack. But the military men told us there was no sort of question that Rouse's Point was extremely desirable as a point of military defense. This is plain enough, and I need not spend time to prove it. Of one thing I am certain, that the true road to Canada is by the way of Lake Champlain. That is the old path. I take to myself the credit of having said here, thirty years ago, speaking of the mode of taking Canada, that when an American woodsman undertakes to fell a tree, he does not begin by lopping off the branches, but strikes his ax at once into the trunk. The trunk,

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in relation to Canada, is Montreal, and the River St. Lawrence down to Quebec; and so we found in the last war. It is not my purpose to scan the propriety of military measures then adopted. but I suppose it to have been rather accidental and unfortunate that we began the attack in Upper Canada. It would have been better military policy, as I suppose, to have pushed our whole force by the way of Lake Champlain, and made a direct movement on Montreal; and, though we might thereby have lost the glories of the battles of the Thames and of Lundy's Lane, and of the sortie from Fort Erie, yet we should have won other laurels of equal, and perhaps greater value at Montreal. Once successful in this movement, the whole country above would have fallen into our power. Is not this evident to every gentleman? Now Rouse's Point is the best means of defending both the ingress into the lake and the exit from it. And I say now, that on the whole frontier of the State of New York, with the single exception of the Narrows below the city, there is not a point of equal importance. I hope this government will last forever; but if it does not, and if, in the judgment of Heaven, so great a calamity shall befall us as the rupture of this Union, and the State of New York shall thereby be thrown upon her own defenses, I ask, is there a single point, except the Narrows, the possession of which she will so much desire? No, there is not one. And how did we obtain this advantage for her? The parallel of 45 north was established by the treaty of 1783 as our boundary with Canada in that part of the line. But, as I have stated, that line was found to run south of Rouse's Point. And how did we get back this precious possession? By running a little semicircle like that of the Dutch king? No; we went back to the old line, which had always been supposed to be the true line, and the establishment of which gave us not only Rouse's Point, but a strip of land containing some thirty or forty thousand acres between the parallel of 45 and the old line.

The same arrangement gave us a similar advantage in Vermont; and I have never heard that the constituents of my friend near me (Mr. Phelps) made any complaint of the treaty. That state got about sixty or seventy thousand acres, including several villages, which would otherwise have been left on the British side of the line. We received Rouse's Point, and this additional land, as one of the equivalents for the cession of territory made in Maine. And what did we do for New Hampshire? There was an ancient dispute as to which was the northwesternmost head of the Connecticut River. Several streams were found, either of which might be insisted on as the true boundary. But we claimed that called Hall's Stream. This had not formerly been allowed; the Dutch award did not give to New Hampshire what she claimed; and Mr. Van Ness,

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our commissioner, appointed under the Treaty of Ghent, after examining the ground, came to the conclusion that we were not entitled to Hall's Stream. I thought that we were so entitled, although I admit that Hall's Stream does not join the Connecticut River till after it has passed the parallel of 45. By the Treaty of Washington this demand was agreed to, and it gave New Hampshire one hundred thousand acres of land. I do not say that we obtained this wrongfully, but I do say that we got that which Mr. Van Ness had doubted our right to. I thought the claim just, however, and the line was established accordingly. And here let me say, once for all, that if we had had recourse to another arbitration, we should inevitably have lost what the treaty gave to Vermont and New York, because all that was clear matter of cession, and not adjustment of doubtful boundary.

I think that I ought now to relieve the Senate from any further remarks on this northeastern boundary. I say that it was a favorable arrangement both to Maine and Massachusetts, and that nine tenths of their people are well satisfied with it; and I say also that it was advantageous to New Hampshire, Vermont, and New York; and I say further, that it gave up no important military point, but, on the contrary, obtained one of the greatest consequence and value. And here I leave that part of the case for the consideration of the Senate and of the country. [Here the Senate adjourned.]

April 7, 1846.

Mr. Webster resumed. Yesterday I read an extract from the proceedings in the British Parliament of a dispatch of Lord Palmerston to Mr. Fox, in which Lord Palmerston says that the British government, as early as 1840, had perceived that they never could come to a settlement of this controversy with the government of Mr. Van Buren. I do not wish to say whether the fault was more on one side than the other; but I wish to bar, in the first place, any inference of an improper character which might be drawn from that statement of the British Secretary of Foreign Affairs. It was not that they looked forward to a change which should bring gentlemen into power here more pliable, or more agreeable to the purposes of England. No, sir, those remarks of Lord Palmerston, whether true or false, were not caused by any peculiar stoutness or stiffness which Mr. Van Buren had ever maintained on our side of the merits of the question. The merits of the boundary question were never discussed by Mr. Van Buren to any extent. The thing that his administration discussed was the formation of a convention of exploration and arbitration to settle the question. A few years before this dispatch of Lord Palmerston to Mr. Fox, the two governments, as I have repeatedly said, had agreed

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how the question should be settled. They had agreed that there should be an exploration. Mr. Van Buren had proposed and urged arbitration also. England had agreed to this, at his request. The governments had agreed to these two principles, therefore, long before the date of that letter of Lord Palmerston; and from that agreement till near the close of Mr. Van Buren's administration, the whole correspondence turned on the arrangement of details of a convention for arbitration, according to the stipulation of the parties. Therefore, it was not on account of any notion that Mr. Van Buren stood up for American questions in a stronger manner than others; it was because these subordinate questions respecting the convention for arbitration had got into so much complexity—so embarrassed with projects and counter-projects—had become so difficult and entangled; and because every effort to disentangle them had made the matter worse. On this account alone Lord Palmerston had made the remarks. I wish to draw no inference that would be injurious to others, to make no imputation on Mr. Van Buren. But it is necessary to remember that this dispute had run on for years, and was likely to run on forever, though the main principles had already been agreed on, viz., exploration and arbitration. It was an endless discussion of details and forms of proceeding, in which the parties receded further and further from each other every day.

One thing more, sir, by way of explanation. I referred yesterday to the report made by General Wool in respect to the road from Kennebec. In point of fact, the place which General Wool recommended in 1838 to be fortified, was a few miles further east, toward the waters of the Penobscot River, than Arnold's route; but, generally, the remark I made was perfectly true, that east of that line there has not been a road or passage. The honorable member from New York yesterday produced extracts from certain debates in Parliament respecting the importance of the territory ceded to England in a military point of view. I beg to refer to some others which I hold in my hand, but which I shall not read—the speeches of Sir Charles Napier, Lord Palmerston, Sir Howard Douglass, &c., as an offset to those quoted by the honorable member. But I do not think it of importance to balance those opinions against each other. Some gentlemen appear to entertain one set of opinions, some another; and, for my own part, I candidly admit, that by both one and the other, facts are overstated. I do not believe, sir, that any thing, in a military point of view, ceded by us to England, is of any consequence to us or to her, or that any thing important, in that respect, was ceded by either party, except one thing—that is, Rouse's Point. I do believe it was an object of importance to repossess ourselves

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of the site of that fortress, and to that point I shall proceed to make a few remarks that escaped me yesterday. I do not complain here that the member from New York has underrated the importance of that acquisition. He has not spoken of it. But what I do complain of—if complaint it may be called—is, that when he spoke of cessions made to England by the Treaty of Washington, a treaty which proposed to proceed on the ground of mutual concessions, equivalents, and considerations—when referring to such a treaty to show the concessions made to England, he did not consider it necessary to state, on the other hand, the corresponding cessions made by England to us. And I say again, that the cession of Rouse's Point by her must be, and is considered to be, by those best capable of appreciating its value, of more importance than all the cessions we made to England in a military point; and to show how our government have regarded its importance, let me remind you that, immediately on the close of the last war, although the country was heavily in debt, there was nothing to which the government addressed itself with more zeal than to fortify this position, as the natural defense of Lake Champlain. As early as 1816, the government paid twenty or thirty thousand dollars for the site, and went on with the work at an expense of one hundred thousand dollars; but in 1818, the astronomers, appointed on both sides, found it was on the English side of the boundary. That, of course, terminated our operations. But that is not all. How did our government regard the acquisition by the Treaty of Washington? Why, the ink with which that treaty was signed was hardly dry, when the most eminent engineers were dispatched to that place, who examined its strength, and proceeded to renew and rebuild it. And no military work—not even the fortifications for the defense of the Narrows, approaching the harbor of New York, has been proceeded with by the government with more zeal. Having said so much, sir, I will merely add, that if gentlemen desire to obtain more information on this important subject, they may consult the head of the engineer corps, Colonel Totten, and Commodore Morris, who went there by instructions to examine it, and who reported thereon.

And here, sir, I conclude my remarks on the question of the northeastern boundary.

And I now leave it to the country to say, whether this question—this troublesome, and annoying, and dangerous question—which had lasted through the ordinary length of two generations, having now been taken up in 1841, was not well settled, and promptly settled? Whether it was not well settled for Maine and Massachusetts, and well settled for the whole country? And whether, in the opinion of all fair and candid men,

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the complaint about it which we hear at this day does not arise entirely from a desire that those connected with the accomplishment of a measure so important to the peace of the country should not be allowed to derive too much credit from it?

Mr. President, the destruction of the steam-boat "Caroline," in the harbor of Schlosser, by a British force, in December, 1837, and the arrest of Alexander M'Leod, a British subject, composing part of that force, four years afterward, by the authorities of New York, and his trial for an alleged murder committed by him on that occasion, have been subjects of remark, here and elsewhere, at this session of Congress. They are connected subjects, and call, in the first place, for a brief historical narrative.

In the year 1837, a civil commotion, or rebellion, which had broken out in Canada, had been suppressed, and many persons engaged in it had fled to the United States. In the autumn of that year, these persons, associating with themselves many others of lawless character in the United States, made actual war on Canada, and took possession of Navy Island, belonging to England, in the Niagara River. It may be the safest course to give an account of these occurrences from official sources. Mr. Van Buren thus recites the facts, as the government of the United States understood them, in his message of December, 1838:

"I had hoped that the respect for the laws and regard for the peace and honor of their own country, which has ever characterized the citizens of the United States, would have prevented any portion of them from using any means to promote insurrection in the territory of a power with which we are at peace, and with which the United States are desirous of maintaining the most friendly relations. I regret deeply, however, to be obliged to inform you that this has not been the case.

"Information has been given to me, derived from official and other sources, that many citizens of the United States have associated together to make hostile incursions from our territory into Canada, and to aid and abet insurrection there, in violation of the obligations and laws of the United States, and in open disregard of their own duties as citizens. This information has been in part confirmed by a hostile invasion actually made by citizens of the United States, in conjunction with Canadians and others, and accompanied by a forcible seizure of the property of our citizens, and an application thereof to the prosecution of military operations against the authorities and people of Canada. The results of these criminal assaults upon the peace and order of a neighboring country have been, as was to be expected, fatally destructive to the misguided or deluded persons engaged in them, and highly injurious to those in whose behalf they are professed to have been undertaken. The authorities in Canada, from intelligence received of such intended movements among our citizens, have felt themselves obliged to take precautionary measures against them, have actually embodied the militia, and assumed an attitude to repel an invasion, to which they believed the colonies were exposed from the United States. A state of feeling on both sides of the frontier had thus been produced which called for prompt and vigorous interference."

The following is the British account of the same occurrence:

"In this state of things, a small band of Canadian refugees, who had taken shelter in the State of New York, formed a league with a number of the citizens of the United States for the purpose of invading the British territory, not to join a

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party engaged in civil war, because civil war at that time in Canada there was none, but in order to commit, within the British territory, the crimes of robbery, arson, and murder.

"By a neglect on the part of that government (New York), which seems to admit of but one explanation, the store-houses which contained the arms and ammunition of the state were left unguarded, and were consequently broken open by this gang, who carried off thence, in open day, and in the most public manner, cannon, and other implements of war.

"After some days' preparation, these people proceeded, without any interruption from the government or authorities of the State of New York, and under the command of an American citizen, to invade and occupy Navy Island, and part of the British territory; and, having engaged the steam-boat Caroline, which for their special service was cut out of the ice, in which she had been inclosed in the port of Buffalo, they had used her for the purpose of bringing over to Navy Island, from the United States territory, men, arms, ammunition, stores, and provisions.

"The preparations made for this invasion of British territory by a band of men organized, armed, and equipped within the United States, and consisting partly of British subjects and partly of American citizens, had induced the British authorities to station a military force at Chippewa to repel the threatened invasion, and to defend her majesty's territory. The commander of that fort, seeing that the Caroline was used as a means *of supply and re-enforcement for the invaders*, who had occupied Navy Island, judged that the capture and destruction of that vessel would prevent supplies and re-enforcements from passing over to the island, and would, moreover, deprive the force on the island of the means of passing over to the British territory on the main land."

According to the British account, the expedition sent to capture the Caroline expected to find her at Navy Island; but when the commanding officer came round the point of the island in the night, he found that she was moored to the other shore. This did not deter him from making the capture. In that capture, a citizen of the United States, by the name of Durfree, lost his life; the British authorities pretend, by a chance shot by one of his own party; the American, by a shot from one of the British party.

This transaction took place on the 29th of December, 1837, in the first year of Mr. Van Buren's administration; and no sooner was it known here, and made the subject of a communication by Mr. Forsyth to Mr. Fox, than the latter avowed it as an act done by the British authorities, and justified it as a proper and necessary measure of self-defense. Observe, sir, if you please, that the Caroline was destroyed in December, 1837, and Mr. Fox's avowal of that destruction, as a government act, and his justification of it, were made in January following, so soon as knowledge of the occurrence reached Washington. Now, sir, if the avowal of the British minister, made in the name of his government, was a sufficiently authentic avowal, why, then, from that moment the government of Great Britain became responsible for the act, and the United States was to look to that government for reparation or redress, or whatever act, or acknowledgment, or apology the case called for. If Mr. Fox's letter was proper proof that the destruction of the Caroline was an act of public force, then the government of Great Britain was directly responsible to the government

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of the United States; and of the British government directly, and the British government only, was satisfaction to be demanded. Nothing was immediately done; the matter was suffered to lie, and grow cool; but it afterward became a question at what time the United States government did first learn, by sufficient evidence and authority, that the British government had avowed the destruction of the Caroline as its own act. Now, in the first place, there was the direct avowal of Mr. Fox, made at the time, and never disapproved. This avowal, and the account of the transaction, reached London in February, 1838. Lord Palmerston thinks that, in conversations with Mr. Stevenson not long subsequent, he intimated distinctly that the destruction of the vessel would turn out to be justifiable. At all events, it is certain that, on the 22d day of May, 1838, in an official note to Lord Palmerston, written by instructions from his government, demanding reparation for her destruction, Mr. Stevenson did state that "the government of the United States did consider that transaction as an outrage upon the United States, and a violation of United States territory, committed by British troops, planned and executed by the Lieutenant-governor of Upper Canada." It is clear, then, that the government of the United States so understood the matter when it gave Mr. Stevenson the instructions on which he made this demand. The administration knew, full well, that the expedition was a public expedition, set on foot by the authorities of Canada, avowed here immediately by Mr. Fox as an act for which the British government took upon itself the responsibility, and never disavowed by that government at any time or in any way.

And now, sir, why was this aggression on the territory of the United States—why was this indignity suffered to remain unvindicated and unredressed for three years? Why was no answer made, and none insisted on, to Mr. Stevenson's official and direct demand for reparation? The jealous guardians of national honor, so tenaciously alive to what took place in 1842, what opiate had drugged their patriotism for so many years? Whose fault was it that, up to 1841, the government of Great Britain had been brought to no acknowledgment, no explanation, no apology? This long and unbroken slumber over public outrage and national indignity, who indulged in it? Nay, if the government of the United States thought it had not sufficient evidence that the *outrage* was, as it had declared it to be itself, a public outrage, then it was a *private* outrage, the invasion of our territory, and the murder of an American citizen, without any justification, or pretense of justification; and had it not become high time that such an outrage was redressed?

Sir, there is no escape from this. The administration of Mr.

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Van Buren knew perfectly well that the destruction of the Caroline was an act of public force, done by the British authorities in Canada. They knew it had never been disavowed at home. The act was a wrongful one on the part of the Canadian forces. They had no right to invade the territory of the United States. It was an aggression for which satisfaction was due, and should have been insisted on immediately, and insisted on perseveringly. But this was not done. The administration slept, and slept on, and would have slept till this time, if it had not been waked by the arrest of M'Leod. Being on this side of the line, and making foolish and false boasts of his martial achievements, M'Leod was arrested in November, 1840, on a charge for the murder of Durfree in capturing the Caroline, and committed to prison by the authorities of New York. He was bailed; but violence and mobs overawed the courts, and he was recommitted to jail. This was an important and very exciting occurrence. Mr. Fox made a demand for his immediate release. The administration of Mr. Van Buren roused itself, and looked round to ascertain its position. Mr. Fox again asserted that the destruction of the Caroline was an act of public force, done by public authority, and avowed by the English government, as the American government had long before known. To this Mr. Forsyth replied, in a note of December 26, 1840, thus: "If the destruction of the Caroline was a public act of persons in her majesty's service, obeying the order of their superior authorities, this fact has not been before communicated to the government of the United States by a person authorized to make the admission." Certainly, Mr. President, it is not easy to reconcile this language with the instructions under which Mr. Stevenson made his demand, of May, 1838, and which demand he accompanied with the declaration that the act was planned and executed by the authorities of Canada. Whether the act of the governor had or had not been approved at home, the government of the United States, one would think, could hardly need to be informed, in 1840, that that act was committed by persons in her majesty's service, obeying the order of their superior authorities. Mr. Forsyth adds, very properly, that it will be for the courts to decide on the validity of the defense. It is worthy of remark, that in this letter of December 26, 1840, Mr. Forsyth complains that up to that day the government of the United States had not become acquainted with the views and intentions of the government of England respecting the destruction of the Caroline! Now, Mr. President, this was the state of things in the winter of 1840, '41, and on the 4th of March, 1841, when General William Henry Harrison became President of the United States.

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On the 12th of that same month of March, Mr. Fox wrote to the Department of State a letter, in which, after referring to his original correspondence with Mr. Forsyth, in which he had avowed and justified the capture of the Caroline as an act of necessary defense, he proceeds to say:

"The undersigned is directed, in the first place, to make known to the government of the United States, that her majesty's government entirely approve of the course pursued by the undersigned in that correspondence, and of the language adopted by him in the official letters above mentioned.

"And the undersigned is now instructed again to demand from the government of the United States, formally, in the name of the British government, the immediate release of Mr. Alexander M'Leod.

"The grounds upon which the British government make this demand upon the government of the United States are these: That the transaction, on account of which Mr. M'Leod has been arrested and is to be put upon his trial, was a transaction of a public character, planned and executed by persons duly empowered by her majesty's colonial authorities to take any steps and do any acts which might be necessary for the defense of her majesty's territories, and for the protection of her majesty's subjects; and that, consequently, those subjects of her majesty who engaged in that transaction, were performing an act of public duty for which they can not be made personally and individually answerable to the laws and tribunals of any foreign country.

"The transaction may have been, as her majesty's government are of opinion that it was, a justifiable employment of force for the purpose of defending the British territory from the unprovoked attack of a band of British rebels and American pirates, who, having been permitted to arm and organize themselves within the territory of the United States, had actually invaded and occupied a portion of the territory of her majesty; or it may have been, as alleged by Mr. Forsyth in his note to the undersigned of the 26th of December, 'a most unjustifiable invasion, in time of peace, of the territory of the United States.' But it is a question essentially of a political and international kind, which can be discussed and settled only between the two governments, and which the courts of justice of the State of New York can not by possibility have any means of judging, or any right of deciding."

The British government insisted that it must have been known, and was well known, long before, that it had avowed and justified the capture of the Caroline, and taken upon itself the responsibility. Mr. Forsyth, as you have seen, sir, in his note of December 26th, had said, that fact had not been before communicated by a person authorized to make the admission. Well, sir, then, what was now to be done? Here was a new, fresh, and direct avowal of the act by the British government, and a formal demand for M'Leod's immediate release. And how did General Harrison's administration treat this? Sir, just as it ought to have treated it. It was not poor and mean enough in its intercourse with a foreign government to make any reflections on its predecessor, or appear to strike out a new path for itself. It did not seek to derogate, in the slightest degree, from the propriety of what had been said and done by Mr. Van Buren and Mr. Forsyth, whatever eminent example it might have found for such a course of conduct. No; it rather adopted what Mr. Forsyth had said in December, to wit, that at that time no authentic avowal had been communicated to the United States. But now an avowal had been made, on

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the authority of the government itself; and General Harrison acted, and acted rightly, on the case made by this avowal. And what opinions did he form, and what course did he pursue, in a crisis, and in regard to transactions so intimately connected with the peace and honor of the country?

Sir, in the first place, General Harrison was of opinion that the entering of the United States territory by British troops, for the purpose of capturing or destroying the Caroline, was unjustifiable. That it was an aggression—a violation of the territory of the United States. Not that the British forces might not have destroyed that vessel, if they could have found her on their own side of the line; for she was unlawfully employed—she was assisting to make war on Canada. But she could not be followed into a port of the United States, and there captured. This was an offense to the dignity and sovereignty of this government, for which apology and satisfaction ought long since to have been obtained, and which apology and satisfaction it was not yet too late to demand. This was General Harrison's opinion.

In the next place, and on the other hand, General Harrison was of opinion that the arrest and detention of M'Leod were contrary to the law of nations. M'Leod was a soldier, acting under the authority of his government, and obeying orders which he was bound to obey. It was absurd to say that a soldier, who must obey orders or be shot, may still be hanged if he does obey them. Was General Harrison to turn aside from facing the British lion, and fall on a lamb? Was he to quail before the crown of England, and take vengeance on a private soldier? No, sir, that was not in character for William Henry Harrison. He held the British government responsible; he died, to the great grief of his country, but in the time of his successor that responsibility was justly appealed to, and satisfactorily fulfilled.

Mr. Fox's letter, written under instructions from Lord Palmerston, was a little peremptory, and some expressions were regarded as not quite courteous and conciliatory. This caused some hesitation; but General Harrison said that he would not cavil at phrases, since, in the main, the British complaint was well founded, and we ought at once to do what we could to place ourselves right.

Sir, the members of the administration were all of one mind on this occasion. General Harrison, himself a man of large general reading and long experience, was decidedly of opinion that M'Leod could not be lawfully holden to answer, in the courts of New York, for what had been done by him as a soldier, under superior orders. All the members of the administration were of the same opinion, without doubt or hesitation.

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I may, without impropriety, say, that Mr. Crittenden, Mr. Ewing, Mr. Bell, Mr. Badger, and Mr. Granger were not all likely to come to an erroneous conclusion on this question of public law, after they had given it full consideration and examination.

Mr. Fox's letter was answered, and from that answer I will read an extract:

"Mr. Fox informs the government of the United States that he is instructed to make known to it that the government of her majesty entirely approve the course pursued by him in his correspondence with Mr. Forsyth in December last, and the language adopted by him on that occasion; and that the government have instructed him 'again to demand from the government of the United States, formally, in the name of the British government, the immediate release of Mr. Alexander M'Leod;' that 'the grounds upon which the British government make this demand upon the government of the United States are these: That the transaction on account of which Mr. M'Leod has been arrested, and is to be put upon his trial, was a transaction of a public character, planned and executed by persons duly empowered by her majesty's colonial authorities to take any steps and to do any acts which might be necessary for the defense of her majesty's territories, and for the protection of her majesty's subjects; and that, consequently, those subjects of her majesty who engaged in that transaction were performing an act of public duty for which they can not be made personally and individually answerable to the laws and tribunals of any foreign country.'

"The President is not certain that he understands precisely the meaning intended by her majesty's government to be conveyed by the foregoing instruction.

"This doubt has occasioned with the President some hesitation; but he inclines to take it for granted that the main purpose of the instruction was to cause it to be signified to the government of the United States that the attack on the steamboat 'Caroline' was an act of public force, done by the British colonial authorities, and fully recognized by the queen's government at home, and that, consequently, no individual concerned in that transaction can, according to the just principles of the laws of nations, be held personally answerable, in the ordinary courts of law, as for a private offense; and that, upon this avowal of her majesty's government, Alexander M'Leod, now imprisoned on an indictment for murder, alleged to have been committed in that attack, ought to be released by such proceedings as are usual and are suitable to the case.

"The President adopted the conclusion that nothing more than this could have been intended to be expressed, from the consideration that her majesty's government must be fully aware that, in the United States, as in England, persons confined under judicial process can be released from that confinement only by judicial process. In neither country, as the undersigned supposes, can the arm of the executive power interfere, directly or forcibly, to release or deliver the prisoner. His discharge must be sought in a manner conformable to the principles of law and the proceedings of courts of judicature. If any indictment like that which has been found against Alexander M'Leod, and under circumstances like those which belong to his case, were pending against an individual in one of the courts of England, there is no doubt that the law officer of the crown might enter a nolle prosequi, or that the prisoner might cause himself to be brought up on habeas corpus, and discharged, if his ground of discharge should be adjudged sufficient, or that he might prove the same facts, and insist on the same defense or exemption on his trial.

"All these are legal modes of proceeding, well known to the laws and practice of both countries. But the undersigned does not suppose that, if such a case were to arise in England, the power of the executive government could be exerted in any more direct manner.

"Even in the case of embassadors and other public ministers, whose right to exemption from arrest is personal, requiring no fact to be ascertained but the mere fact of diplomatic character, and to arrest whom is sometimes made a highly penal offense, if the arrest be actually made, it must be discharged by application to the courts of law.

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"It is understood that Alexander M'Leod is holden, as well on civil as on criminal process, for acts alleged to have been done by him in the attack on the 'Caroline,' and his defense or ground of acquittal must be the same in both cases. And this strongly illustrates, as the undersigned conceives, the propriety of the foregoing observations; since it is quite clear that the executive government can not interfere to arrest a civil suit between private parties in any stage of its progress, but that such suit must go on to its regular judicial termination. If, therefore, any course different from such as have been now mentioned was in contemplation of her majesty's government, something would seem to have been expected from the government of the United States as little conformable to the laws and usages of the English government as to those of the United States, and to which this government can not accede.

"The government of the United States, therefore, acting upon the presumption which is already adopted, that nothing extraordinary or unusual was expected or requested of it, decided, on the reception of Mr. Fox's note, to take such measures as the occasion and its own duty appeared to require.

"In his note to Mr. Fox of the 26th of December last, Mr. Forsyth, the Secretary of State of the United States, observes, that, 'if the destruction of the Caroline was a public act of persons in her majesty's service, obeying the order of their superior authorities, this fact has not been before communicated to the government of the United States by a person authorized to make the admission; and it will be for the court, which has taken cognizance of the offense with which Mr. M'Leod is charged, to decide upon its validity when legally established before it;' and adds: 'The President deems this a proper occasion to remind the government of her Britannic majesty that the case of the Caroline has been long since brought to the attention of her majesty's principal Secretary of State for Foreign Affairs, who, up to this day, has not communicated its decision thereupon. It is hoped that the government of her majesty will perceive the importance of no longer leaving the government of the United States uninformed of its views and intentions upon a subject which has naturally produced much exasperation, and which has led to such grave consequences.'

"The communication of the fact that the destruction of the 'Caroline' was an act of public force by the British authorities being formally communicated to the government of the United States by Mr. Fox's note, the case assumes a different aspect.

"The government of the United States entertains no doubt that, after this avowal of the transaction as a public transaction, authorized and undertaken by the British authorities, individuals concerned in it ought not, by the principles of public law and the general usage of civilized states, to be holden personally responsible in the ordinary tribunals of law for their participation in it. And the President presumes that it can hardly be necessary to say that the American people, not distrustful of their ability to redress public wrongs by public means, can not desire the punishment of individuals when the act complained of is declared to have been the act of the government itself.

"Soon after the date of Mr. Fox's note, an instruction was given to the attorney-general of the United States from this department, by direction of the President, which fully sets forth the opinions of this government on the subject of Mr. M'Leod's imprisonment, a copy of which instruction the undersigned has the honor herewith to inclose.

"The indictment against M'Leod is pending in a state court; but his rights, whatever they may be, are no less safe, it is to be presumed, than if he were holden to answer in one of this government.

"He demands immunity from personal responsibility by virtue of the law of nations; and that law, in civilized states, is to be respected in all courts. None is either so high or so low as to escape from its authority in cases to which its rules and principles apply."

And now, sir, who will deny that this decision was entirely correct? Who will deny that this arrest of M'Leod, and this threatening to hang him, was just cause of offense to the British government? Sir, what should we have thought ourselves, in a like case? If United States troops, by the lawful authority

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of their government, were ordered to pass over the line of boundary for any purpose—retaliation, reprisal, fresh pursuit of an enemy, or any thing else—and the government of the territory invaded, not bringing our government to account, but sleeping three years over the affront, should then snatch up one of our citizens found in its jurisdiction, and who had been one of the force, and proceed to try, condemn, and execute him, sir, would not the whole country have risen up like one man? Should we have submitted to it for a moment? Suppose that now, by order of the President, and in conformity to law, an American army should enter Canada, or Oregon, for any purpose which the government of the United States thought just, and which it was ready to defend, and the British government, turning away from demanding responsibility or satisfaction from us, should seize an individual soldier, try him, convict him, and execute him; sir, should we not declare war at once, or make war? Would this be submitted to for a moment? Is there a man, with an American heart in his bosom, who would keep still, and be silent, in the face of such an outrage on public law, and such an insult to the flag and sovereignty of his country? Who would endure that an American soldier, acting in obedience to lawful authority, and with the eagle and the stars and stripes over his head, should be arrested, tried, and executed as a private murderer? Sir, if we had received such an insult, and atonement had not been instantly made, we should have avenged it at any expense of treasure and of blood. A manly feeling of honor and character, therefore, a sense of justice, and respect for the opinion of the civilized world, a conviction of what would have been our own conduct in a like case, all called on General Harrison to do exactly what he did.

England had assumed her proper responsibility, and what was it? She had made an aggression upon the United States by entering her territory for a belligerent purpose. She had invaded the sanctity of our territorial rights. As to the mere destruction of the vessel, if perpetrated on the Canadian side, it would have been quite justifiable. The persons engaged in that vessel were, it is to be remembered, violating the laws of their own country, as well as the law of nations; some of them suffered for that offense, and I wish all had suffered.

Mr. Allen here desired to know where the proof was of the fact that the Caroline was so engaged. Was there any record of the fact?

Mr. Webster. Yes, there is proof—abundant proof. The fact that the vessel was so engaged was, I believe, pretty well proved on the trial and conviction of Van Rensselaer. But, besides, there is abundant proof in the Department of State, in the evidence taken in Canada by the authorities there, and sent

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to Great Britain, and which could be confirmed by any body who lived any where from Buffalo down to Schlesser. It was proved by the *res gestæ*. What was the condition and conduct of the Caroline? Mr. Stevenson, making the best case he could for the United States, said that she was cleared out at Buffalo, in the latter part of December, to ply between Buffalo and Schlosser, on the same side of the river, a few miles below. Lord Palmerston, with his usual sarcasm, and with more than a usual occasion for the application of that sarcasm, said, "It was very true she was cleared out; but Mr. Stevenson forgot that she was also 'cut out' of the ice in which she had been laid up for the winter; and that, in departing from Buffalo, instead of going down to Schlosser, she went down to Navy Island;" and his lordship asked, "What new outbreak of traffic made it necessary to have a steam-boat plying, in the depth of winter, between Buffalo and Schlosser, when exactly between those two places on the shore there was a very convenient railroad?" I will most respectfully suggest all this to the consideration of the chairman of the Committee on Foreign Relations. And, as further evidence, I will state the entire omission of the government of the United States, during the whole of Mr. Van Buren's administration, to make any demand for reparation for the property destroyed. So far as I remember, such a suggestion was never made. But one thing I do very well remember, and that is, that a person who had some interest in the property came to the city of Washington, and thought of making an application to the government, in the time of Mr. Van Buren, for indemnity.

Well, he was told that the sooner he shut his mouth on that subject the better, for he himself, knowing that the purpose to which the vessel was to be applied came within the purview of the statutes of the United States against fitting out hostile expeditions against countries with which the United States were at peace, was liable to prosecution; and he ever afterward, profiting by this friendly admonition, held his peace. That was another piece of evidence which I respectfully submit to the chairman of the Committee on Foreign Relations.

Well, sir, M'Leod's case went on in the court of New York, and I was utterly surprised at the decision of that court on the *habeas corpus*. On the peril and at the risk of my professional reputation, I now say, that the opinion of the court of New York in that case is not a respectable opinion, either on account of the result at which it arrives, or the reasoning on which it proceeds.*

* This opinion has been ably and learnedly reviewed by Judge Tallmadge, of the Superior Court of the City of New York. Of this review, the late Chief justice Spencer says, "It refutes and overthrows the opinion most amply." Chan-

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M'Leod was tried and acquitted, there being no proof that he had killed Durfree. Congress afterward passed an act, that if such cases should arise hereafter, they should be immediately transferred to the courts of the United States. That was a necessary and a proper law. It was requisite, in order to enable the government of the United States to maintain the peace of the country. And it was perfectly constitutional; because it is a just and important principle—quite a fundamental principle, indeed—that the judicial power of the general government should be co-extensive with its legislative and executive powers. When the authority and duty of this government is to be judicially discussed and decided, that decision must be in the courts of the United States, or else that which holds the government together would become a band of straw. M'Leod having been acquitted, this result put an end to all question concerning his case; and Congress having passed a law providing for such cases in future, it only remained that a proper explanation and apology—all that a nation of high honor could ask, or a nation of high honor could give—should be obtained for the violation of territorial sovereignty; and that was obtained. Not obtained in Mr. Van Buren's time, but obtained, concurrently with the settlement of other questions, in 1842.

Before Mr. Fox's letter was answered, sir, the President had directed the attorney-general to proceed to New York, with copies of the official correspondence, and with instructions to signify to the Governor of New York the judgment which had been formed here. These instructions have been referred to, and they are public. The moment was critical. A mob had arrested judicial proceedings on the frontier. The trial of M'Leod was expected to come on immediately at Lockport; and what would be the fate of the prisoner, between the opinions entertained inside of the court-house, and lawless violence without, no one could foresee. The instructions were in the spirit of the answer to Mr. Fox's letter. And I now call on the honorable member from New York to furnish authority for his charge, made in his speech the other day, that the government of the United States had "interfered, directly and palpably," with the proceedings of the courts of New York. It is untrue. He has no authority, not a particle, for any such statement. All that was done was made public. He has no other authority for what he said than the public papers; they do not bear him out. To say, on the ground of what is public, that the government of the United States interfered, "directly and

cellor Kent says of it, "It is conclusive upon every point. I should have been proud if I had been the author of it." The opinion of the Supreme Court of New York is not likely to be received, at home or abroad, as the American understanding of an important principle of public law.

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palpably," with the proceedings in New York, is not only untrue, but ridiculous. There was no demand for the delivery of M'Leod to the United States; there was no attempt to arrest the proceedings of the New York court. Mr. Fox was told that these proceedings must go on until they were judicially terminated; that M'Leod was in confinement by judicial process, and could only be released by judicial process under the same authority. All this is plainly stated in Mr. Crittenden's instructions, and no man who reads that paper can fall into any mistake about it. There was no "direct and palpable" interference with the New York courts, nor any interference at all. The Governor of New York did not think there was, nor did any body else ever think there was.

Mr. President, the honorable senator from Ohio (Mr. Allen) bestowed, I believe, a very considerable degree of attention upon topics connected with the Treaty of Washington. It so happened that my engagements did not permit me to be in the Senate during the delivery of any considerable portion of that speech. I was in occasionally, however, and heard some parts of it. I have not been able to find any particular account of the honorable member's remarks. In the only printed speech which I have been able to lay my hands on, it is said that he took occasion to speak, in general terms, of various topics—enumerating them—embraced in the treaty of 1842. As I have not seen those remarks, I shall not now undertake to make any further allusion to them. If I should happen to see them hereafter, so far as I may believe that they have not been answered by what I have already said, or may now say, I may, perhaps, deem it worth while to embrace some opportunity of taking such notice of them as to me they may seem to require.

Mr. Allen. I will now state, for the satisfaction of the senator, the general substance of what I said on the subject. If he so desires, I will now proceed to do so.

Mr. Webster. I think that, upon the whole, when the gentleman shall furnish the public with a copy of his speech, I may, perhaps, have a more proper opportunity to pay attention to it, especially as I have to say something of other speeches, which may at present occupy as much of the time of the Senate as can well be devoted to this subject. And now, sir, *paulo majora canamus.*

An honorable member from New York nearest the chair (Mr. Dickinson) made a speech on this subject. I propose to take some notice of that speech. But first I must remark, that the honorable gentleman did not seem to be satisfied with his own light; he borrowed somewhat extensively. He borrowed, and incorporated into his speech, by way of a note, what he entitles, "*Extracts from the Speech of Mr. C. J. Ingersoll in*

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the House of Representatives." Well, then, my first business is to examine a little this jewel which the honorable gentleman chooses to work into his own diadem; and I shall do it unmoved in temper, I hope, and, at the same time, I do not mean to omit what I may consider a proper notice of the whole of it, and all its parts. And here, sir, is that extraordinary ebullition, called by the honorable senator "the speech of Mr. C. J. Ingersoll in the House of Representatives."

Mr. President, I almost wish I could find myself out of order in referring to it, as I imagine I should be if it had not been that the honorable member has made it his own and a part of his speech. I should be very glad to be compelled not to take any notice of it—to be told that I was not at liberty to know that such a speech was ever made; and should thank God to know that such an ebullition had never been made out of a bar-room any where—and that's a theater quite too high for it. Now, sir, a large portion of this "speech" seems to be directed against the individual now addressing the Senate. I will read its parts and parcels, and take such notice of them as they deserve as I go along. Hear what the New York member says:

"Mr. Dickinson had understood there was a correspondence between the authorities at Washington and the Governor of New York to that effect; but he particularly alluded to a letter addressed by Mr. Webster, Secretary of State, to Mr. Crittenden, Attorney-general at that time, directing him to proceed to New York and take charge of the trial of M'Leod. He had it not then before him, and did not recollect its precise language, but would refer to it before he should close. He would endeavor to speak of the history of the past truly, and in perfect kindness, but he wished to show what we had gained by negotiations with Great Britain, and who had made the concessions."

Now, sir, either by way of giving interest to this narrative, or something else, the gentleman from New York makes this a little more distinct. He says not only that Mr. Webster wrote this letter to the Governor of New York with his own hand, but that he sent it by express. I believe the "express" matter was expressly by the gentleman from New York.

Mr. Dickinson. Will you allow me?

Mr. Webster. Oh! yes, I will allow you.

Mr. Dickinson. The gentleman from New York is not at all responsible for the statement in the note. Nor does the gentleman from New York make the extracts from Mr. Ingersoll's speech any part of his; on the contrary, I stated expressly, at the time, that I alluded to it as a very extraordinary statement. Having met with the emphatic contradiction of the honorable senator from Massachusetts, or what implied contradiction, I proposed to read in justification the remarks of Mr. Ingersoll. The friends of the senator in his immediate vicinity objected to have it read. I did not read the extract, nor was it in the report of my speech, which, in the usual way, found its way to the newspapers. But, as I had repeated calls for what I had

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alluded to as spoken by Mr. Ingersoll, I did append, in the pamphlet edition of my speech, those remarks. I gave them as they were found in the newspaper, and therefore the senator from New York neither added to nor diminished these remarks. I wish to set the senator right as to this single matter of fact.

Mr. Webster. I have only to state the fact that the additional falsehood in the speech of Mr. Ingersoll, as published by the member from New York, is not to be found in the published report.

Mr. Dickinson. In what paper?

Mr. Webster. In the National Intelligencer, as corrected by Mr. Ingersoll himself; and so it would appear that if not inserted by the member from New York, there is one falsehood in the case which the original author was not so graceless as to retain. But I go on with this speech:

"Out of this controversy arose the arrest of Alexander M'Leod. What he intended to state now consisted of facts not yet generally known, but which would soon be made known, for they were in progress of publication, and he had received them in confidence from the best authority. When M'Leod was arrested, General Harrison had just died, and Mr. Tyler was not yet at home as his successor. Mr. Webster, who was *de facto* the administration—Mr. Webster wrote to the Governor of New York, with his own hand, a letter, and sent it by express, marked 'private,' in which the governor was told that he must release M'Leod, or see the magnificent commercial emporium laid in ashes. The brilliant description given by the gentleman from Virginia of the prospective destruction of that city in the case of a war was, in a measure, anticipated on this occasion. M'Leod must be released, said the Secretary of State, or New York must be laid in ashes. The governor asked when this would be done. The reply was, *forthwith*. Do you not see coming on the waves of the sea the Paixhan guns? and if M'Leod be not released, New York will be destroyed. But, said the governor, the power of pardon is vested in me, and even if he be convicted, he may be pardoned. Oh, no, said the secretary; if you even try him, you will bring destruction on yourselves."

Well, now, sir, I say that a series of more direct, unalloyed falsehoods—absolute, unqualified, entire—never appeared in any publication in Christendom. Every allegation here made—every one, would entirely justify the use of that expressive monosyllable, which some people are base enough and low enough to deserve to have thrown in their teeth, but which a gentleman does not often like to utter. Every one of them, from beginning to end, is false. There is not a particle of truth in them; there is not the slightest foundation for any one of these assertions. "Mr. Webster wrote a private letter," saying that the "commercial emporium would be laid in ashes!" "Paixhan guns!" False, sir! all false! I never said or wrote such a thing in my life to the Governor of the State of New York. "M'Leod must be released." It is false! I never said any such thing. "New York must be laid in ashes." It is false! I said or wrote no such thing. "The governor asked when this was to be done." What does this mean? Why, it implies that the Governor of New York wrote to me a letter,

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in answer to mine, inquiring when New York was to be "laid in ashes," and the reply was, "forthwith." And here we have this—Mr. Ingersoll himself preparing this speech for the press, italicizing the word *forthwith*, as if I had written another letter to the Governor of New York, "telling him" that New York was to be laid in ashes "*forthwith*." "But, said the governor, the power of pardon is vested in me, and if he be convicted, he may be pardoned." Here is another letter—a third letter to me! "Oh, no, said the secretary"—why, here I am writing a *fourth* letter!—"if you even try him, you will bring destruction upon yourselves." This is stated by a man, or a *thing!* that has a seat in one of the houses of Congress. I promised to keep my temper, and I will. The whole concern is infinitely contemptible, and can not disturb the temper of a reasonable man. But I will expose it, and let the country see it. Such, then, are the contents of the letters which this person describes as "facts not generally known, but which would soon be made known, for they were in progress of publication, and he had received them in confidence from the best authority." Well, I do not know where he got his "authority," unless, as suggested by a friend near me, it was from some chapters of his own recent work! But let me state what did occur, and prepare the minds of the Senate for some degree of astonishment, that any man in the world could tell such a story as this.

When M'Leod was arrested, there was a good deal of conversation in Washington and elsewhere about what would happen. It was a subject of very considerable interest, and certainly of embarrassment to the government. It was hoped and expected by me, and I believe by the President and other gentlemen, that the Governor of New York would see that it was a case in which, if he were invested with authority by the Constitution and the laws of the state, he would recommend the entering of a *nolle prosequi* by the prosecuting officer of the State of New York. It was expected that he would do that, and General Harrison one day said to me that he had received a letter from a friend, in which he was informed that the Governor of New York had made up his mind to take that course, and that he was very glad of it, as it relieved this government. It was about the time that the attorney-general was to proceed to New York to see how the matter stood, or perhaps a day or two after he had left. The case was to be tried immediately, within ten days, at Lockport, in the western part of the State of New York. Having heard this, however, General Harrison directed me to write a note of thanks to the Governor of New York, stating that he thought he had done exactly what was proper, and by so doing had relieved the government from some embarrassment, and the country from some danger of

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collision with a foreign power. And that is every thing said in that letter, or any other letter written by me to the Governor of the State of New York, marked private. The letter is here, if any one wishes to see it, or to hear it read.

Mr. Crittenden here suggested that the letter should be read.

Mr. Webster. Very well. Here it is: I will read it.

(Private.) DEPARTMENT OF STATE, *Washington, March* 17, 1841.

MY DEAR SIR,—The President has learned, not directly, but by means of a letter from a friend, that you had expressed a disposition to direct a *nolle prosequi* in the case of the indictment against M'Leod, on being informed by this government that the British government has officially avowed the attack on the Caroline as an act done by its own authority. The President directs me to express his thanks for the promptitude with which you appear disposed to perform an act which he supposes proper for the occasion, and which is calculated to relieve this government from embarrassment, and the country from some danger of collision with a foreign power.

You will have seen Mr. Crittenden, whom I take this occasion to commend to your kindest regard.

I have the honor to be, yours truly, DANIEL WEBSTER.

His Excellency WM. H. SEWARD, *Governor of New York.*

Mr. Mangum. Was that the only letter written?

Mr. Webster. Yes, the only letter—the only private letter ever written by me to the Governor of New York in the world. Now, how am I to treat such allegations? It is the falsehood "with circumstance." A general statement might pass unregarded; but here he quotes what he calls "the highest authority." He states particulars. He gives all possible plausible marks of credit to the falsehood. How am I to treat it? Why, sir, I pronounce it an utter, an absolute falsehood, in all its parts, from beginning to end. Now, I do not wish to use epithets, nor to call names; but I hold up this picture, which I have painted faintly, but truly—I hold it up to every man in the Senate and in the country, and I ask him to look at it, and then write at the bottom of it any thing which he thinks it most resembles.

The speech proceeds: "The next step taken by the administration was to appoint a district attorney, who was to be charged with the defense of Alexander M'Leod—the gentleman who was lately removed from office—and a fee of five thousand dollars was put into his hands for this purpose." False, sir! false, every way! The government of the United States had no more to do with the employment of Mr. Spencer for the defense of M'Leod than had the government of France. Here [taking up the corrected report of Mr. I.'s speech in the Intelligencer]—here he says that, "enlightened by the gentleman from New York, he found he was mistaken on this point." "Mistaken!" No more mistaken than he was in any of his other allegations. "Mistaken!" No man who makes such statements is entitled to shelter himself under any notion of mistake. His declaration in this particular is no more false,

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nor any less false, than is the declaration that the government of the United States appointed an attorney, or charged their attorney with the defense of M'Leod. They never interfered in the slightest degree. It is true, they furnished to Mr. Spencer, as they would have furnished to any other counsel, the official correspondence, to prove that the government of Great Britain avowed the act of the destruction of the Caroline as their own. "Application was afterward made to the chief justice of the State of New York for the release of M'Leod. The judge did not think proper to grant the application. The marshal was about to let him go, when he was told that he must do it at his peril; and that if M'Leod went out of prison, he should go in." I do not know what the marshal had to do with the case. M'Leod was in prison under the authority of the State of New York. I do not know how it was possible that the marshal, an officer of the United States, could interfere.

But there are some other matters in the speech to which I must refer. "He would call on the honorable member from Massachusetts (Mr. Adams) to sustain him in what he was about to say." I do not find that the honorable member from Massachusetts has yet sustained him in these statements, and I rather think he never will. He asserts that I wrote to the Committee on Foreign Affairs of the House on that subject, asking an outfit and a salary for a special minister to England to settle the Oregon Question. It is a falsehood, as I believe. I never wrote such a letter, to the best of my recollection. "These are facts," he says, "which no one will dispute." I dispute them! I say I have no recollection of them at all. I do not believe Mr. Adams has any recollection of any such note being written by me. If I had written such a note, I think I should have remembered it. Well, now, this person next proceeds to a topic no way connected with what he had been discussing. [Here Mr. Webster read an extract from the speech of Mr. Ingersoll, charging him (Mr. Webster) with offering to give Oregon for free trade with England, in a speech made at a public dinner in Baltimore, May, 1843.] Here by me sits a senator from Maryland (Mr. Johnson) who was present at that dinner, and heard that speech, and if I wanted a witness beyond my own statement and printed speech, I could readily call upon him. In that speech I did not mention Oregon, nor allude to Oregon in the remotest degree. It is an utter falsehood! There can be no mistake about it. The author of this speech (Mr. Ingersoll) was not there. If he knew any thing about it, he must have acquired his knowledge from the printed speech; but in that there was not the slightest reference to Oregon; this is another statement, therefore, just as false as all the rest. Why, sir, hydrostatic pressure has no means of condensing any

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thing into such a narrow compass as the author of this speech condenses falsehood. All steam power does not equal it. What does he say here? Why, that my speech at Baltimore contained a strong recommendation of a commercial treaty with England. Why, sir, a commercial treaty with England to regulate the subjects upon which I was talking at Baltimore —the duties laid on goods by the two countries—was just the thing that I did *not* recommend, and which I there declared the treaty-making power had no right to make—no authority to make. He would represent me as holding out the idea that the power of laying duties for revenue was a power that could be freely exercised by the President and Senate, as part of the treaty-making power! Why, I hope that I know more of the Constitution than that. The ground I took was just the reverse of that—exactly the reverse. Sir, my correspondence, public and private, with England, at that time led me to anticipate, before long, some change in the policy of England with respect to certain articles, the produce of this country—some change with respect to the policy of the corn laws. And I suggested in that speech how very important it would be, if things should so turn out, as that that great product of ours, the Indian corn, of which we raised five times as much as we do of wheat—principally the product of the West and Southwest, especially of the State of Tennessee, which raised annually I do not know how many millions—I suggested, I say, the great good fortune that would happen if an arrangement could be made by which that article of human food could be freely imported into England. And I said that, in the spirit that prevailed, and which I knew prevailed—I knew that the topic had been discussed in England—if an arrangement could be made in some proper manner to produce such a result, it would be a piece of great good fortune. But, then, did I not immediately proceed to say that that could not be done by treaty? I used the word "arrangement"—studiously used it—to avoid the conclusion that it could be done by treaty. I will read what I said:

"But with regard to the direct intercourse between us and England, great interest is excited, many wishes expressed, and strong opinions entertained, in favor of an attempt to settle duties on certain articles by treaty or arrangement. I say, gentlemen, by 'arrangement,' and I use that term by design. The Constitution of the United States leaves with Congress the great business of laying duties to support the government. It has made it the duty of the House of Representatives, the popular branch of the government, to take the lead on such subjects. There have been some few cases in which treaties have been entered into, having the effect to limit duties; but it is not necessary—and that is an important part of the whole subject—it is not necessary to go upon the idea that if we come to an understanding with foreign governments upon rates of duties, that understanding can be effected only by means of a treaty ratified by the President and two thirds of the Senate, according to the form of the Constitution.

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"It is true a treaty is the law of the land. But, then, as the whole business of revenue and general provision for all the wants of the country is undoubtedly a very peculiar business of the House of Representatives or of Congress, I am of opinion, and always have been, that there should be no encroachment upon that power by the exercise of the treaty-making power, unless in case of great and evident necessity."

There have been some cases of necessity, like that of France in the case of Louisiana. And yet he says that in this speech, in which Oregon was not mentioned at all, in which I repudiated altogether the levying of revenue by the treaty-making power, that I recommended a treaty with England in this very speech for the purpose of laying duties. Sir, I grow weary—weary with this tissue of falsehoods. Why should I allude to representations and imputations so groundless? And yet, sir, there is one thing in the speech from which I will supplicate its author to have me excused. He says he never agreed with me in politics. That is true. We never did, and I think we never shall agree. He said, many years ago, that if he had lived in the time of the Revolution, he should have been a Tory. I do not think I should. He has said, also, very recently, in a printed book of his, that the Declaration of Independence was carried with great difficulty, if not by accident. That is his estimate of the great charter of our national existence. We should never agree in politics, I admit. But he said, "Mr. Webster is a man of talents." Here I beg to be excused. I can bear his abuse, but if he undertakes my commendation, I begin to tremble for my reputation.

Sir, it would be natural to ask, what can account for all this apparent malice? Sir, I am not certain there is any malice in it. I think it proceeds rather from a moral obtuseness, a native want of discrimination between truth and falsehood; or that, if there ever was a glimmering perception of that kind, a long discipline in that sublime school of morality, which teaches that "all's fair in politics," appears to have completely obscured it.

Hear him further on the dismemberment of Massachusetts: "By this treaty," he said, "the good old Bay State, which he loved with filial reverence, was disintegrated—torn asunder." "Massachusetts torn asunder!" Sir, Massachusetts owned one half of certain wild lands in Maine. By the Treaty of Washington, she parted with these lands, at their just value, and by this she is represented as disintegrating herself—tearing herself asunder! Can absurdity go further? But the best, or the worst, of all is, that the author of this speech loves the old Bay State with filial reverence! *He* love Massachusetts! *He! he* love the Bay State! If he loves Massachusetts, he is like the luckless swain who

> "Grieves for friendship unreturned,
> Or unregarded love."

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I can tell him, sir, that Massachusetts and all her people, of all classes, hold him, and his love, and his veneration, and his speeches, and his principles, and his standard of truth, and his value of truth, in utter—what shall I say?—any thing but respect.

Sir, this person's mind is so grotesque, so *bizarre*—it is rather the caricature of a mind than a mind. When we see a man of some knowledge and some talent, who is yet incapable of producing any thing true or useful, we sometimes apply to him a phrase borrowed from the mechanics—we say there is a screw loose somewhere. In this case, the screws are loose all over. The whole machine is out of order, disjointed, rickety, crazy, creaking, as often upside down as upside up; as often hurting as helping those who use it, and generally incapable of any thing but bungling and mischief.

Mr. President, I will now take some further notice of what has been said by the member from New York (Mr. Dickinson). I exceedingly regret—truly and unfeignedly regret—that the observations of the gentleman make it my duty to take some notice of them. Our acquaintance is but short, but it has not been unpleasant. I always thought him a man of courteous manners and kind feelings, but it can not be expected I shall sit here and listen to statements such as the honorable member has made on this question, and not answer them. I repeat, it gives me great pain to take notice of the gentleman's speech. This controversy is not mine; all can bear witness to that. I have not undertaken to advance, of my own accord, a single word about the Treaty of Washington. I am forced—driven to it; and, sir, when I am driven to the wall, I mean to stand up and make battle, even against the most formidable odds. What I find fault with is, that throughout his speech, the honorable member continually makes the remark that he is true to the history of the past; he wishes to tell the truth, that he is making a search after truth, and yet makes, in fact, so much misstatement. If this be a specimen of the honorable senator's researches after truth, a collection of his researches would be a very amusing compilation. If the honorable member, during the relaxation from his duties here, would put his researches together, I undertake to say they would sell well. The Harpers would make half a fortune out of them. The people of the United States will pay well for what gives them a good, hearty laugh; and it is no matter, if that effect be produced, whether it be by a story by Dickens, by a caricature from Punch, or a volume of "researches after truth" by an honorable member from New York.

Now, sir, I propose to follow the honorable member a few steps in the course of his researches. I have already said that

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in two or three passages of his speech the gentleman expresses his strong desire to state the facts. [Here Mr. Webster read a quotation from the speech of Mr. Dickinson.] He says there are four things we have lost by the Treaty of Washington. I do not readily find the passages, but the amount is, that we made a very important concession of territory to England under that treaty. Now, that treaty proposed to be a treaty of concession on both sides. The gentleman states concessions made by the United States, but entirely forgets, "in his researches after truth," to state those made on the other side. He takes no notice of the cession of Rouse's Point; or of a strip of land a hundred miles long, on the border of the State of New York. His notion of historical truth is, to state all on one side of the story, and forget all the rest. That is a system of research after truth which will hardly commend itself to the respect of most men. But, sir, what I wish principally to do now, is to turn to another part of this speech. I before gave the gentleman notice that I would call upon him for the authority upon which he made such a statement, as that an attempt was made at Washington by members of the government to stop the course of justice; and now, if the gentleman is ready with the proofs, I would be glad to have them.

Mr. Dickinson. I will reserve what I have to say until the gentleman has done, when I shall produce it to his satisfaction.

Mr. Webster. I undertake to say, no authority will be produced, or is producible, that there were attempts made at Washington to interfere with the trial of M'Leod. What occurred? It was suggested by the President to Governor Seward, that the President was gratified that he had come to the conclusion to enter a *nolle prosequi* in the case of M'Leod. Was that a palpable interference with judicial authority? Was that a resistance of the ordinary process of law? The government of the United States had nothing at all to do with the trial of M'Leod in the New York courts, except to see that he was furnished with the proof of facts necessary to show his defense. But I wish to know in what school the gentleman has been taught that if a man is in prison, and his counsel moves to have him brought up on the great writ of *habeas corpus*, that that is any resistance of judicial process in favor of the prisoner? I dare say the honorable gentleman, among his authorities, can produce none to show such to be an interference. He may call what he likes a direct and palpable interference. He may apply the term to the journey of the attorney-general to Albany, or to any other act or occurrence. But that does not prove it so. I hold the gentleman responsible to prove that the government did some act, or acts, which the common sense of men holds to be a palpable and direct interference. I say there was

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none. He quotes the letter of instructions to the attorney-general. That proposes no interference. That letter says to the attorney-general, that if the case were pending in the courts of the United States, so that the President could have control over it, he would direct the prosecuting officer to enter a *nolle prosequi;* but as it belonged entirely to the Governor of New York, it is referred to the governor himself. That is the substance, in this respect, of the letter which the attorney-general carried to the Governor of New York, and there was not another act done by authority at Washington in reference to this matter, and I call upon the gentleman at his leisure to produce his authority for his statements. One word more in answer to the remarks the gentleman made this morning, and I shall leave him. The ebullition which I have been commenting upon, and which is as black and foul-mouthed as ever was ejected from any thing standing on two legs, was published a few days before the honorable member from New York made his speech. He referred to it, and stated a fact contained in it.

I was here in my seat, and heard it, and I rose and told the honorable member it was an utter falsehood. He knew I denounced it as an absolute calumny. He saw on the face of that statement that, if it was true, it was utterly disgraceful to me. It was, he said, disgraceful to the country, what was done; and if it was disgraceful to the country, it must be so to me. I stated my denial of the truth of that speech of Mr. Ingersoll in the strongest terms—in the most emphatic language. What then? The very next day he proceeded to read that speech in the Senate; but it was objected to, and was not read. But afterward, as he tells us, he sent his own speech to press, and inserted this speech of Ingersoll, knowing that I had pronounced it a falsehood. Yes, miserable, calumnious, and scandalous as it was, he snatched at it eagerly, and put it in his own speech, and then circulated it to the full extent of his ability. I happened to come into this chamber one day when the Senate was not in session, and found our agents and messengers franking and directing that speech to all parts of New York; and I do not doubt that enough of it was sent by him into Broome county, and the adjacent counties, to fill a small barn; and pretty bad fodder it would be. And now I beg to know if that is friendly, candid, or just? Does any man think he can stand up here with the proper dignity of a senator of the United States, and pursue such a course? He knew the speech he quoted was calumnious He heard it pronounced utterly false.

Mr. Dickinson. Onl / one single point in it was answered or denied by the senator. That was, that the fee of the attorney-general was not paid by the government of the United States. I referred to the statements because I had a right to do it, and thinking it was part of my duty.

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Mr. Webster. I do not say what a man has a right to do—

Mr. Dickinson. As a matter of propriety, then—

Mr. Webster. Well, I say it was not proper to do it. Suppose I had dragged out of a ditch some calumny on the gentleman which he denied, would it be proper in me to persist in it after that denial?

Mr. Dickinson. The speech quoted was documentary matter, and I had a right and full liberty to lay such before the country.

Mr. Webster. That is true of documentary history, but when did that speech become documentary history?

Mr. Dickinson. It was considered so by me, because it was printed, and went to the public from an official source.

Mr. Webster. Indeed! So any falsehood, any vile calumny, that is raked up, no matter what it is, if printed, is "documentary history!" The gentleman's own speech, according to that, is already documentary history! Now, sir, I repeat again, that it has given me pain to be driven into this controversy—great pain; but I repeat, also, that if I am attacked here for any thing done in the course of my public life, I shall defend myself. My public reputation, be it what it may, has been earned by thirty years' service in these halls. It is dearer to me than life itself, and till life is extinct I will defend it.

I will now allude, Mr. President, as briefly as possible, to some other provisions of the Treaty of Washington. The article for the delivery of fugitives from justice has been assailed. It has been said that an innocent woman had been sent back to Scotland under its provisions. Why, I believe the fact is, that a woman had murdered her husband, or some relative in Scotland, and fled to this country. She was pursued, demanded, and carried back, and from some defect in the ordinary regularity of evidence, or some such cause, which not unfrequently occurs in criminal trials, she was acquitted. But, sir, I undertake to say, that the article for the extradition of offenders, contained in the treaty of 1842, if there were nothing else in the treaty of any importance, has of itself been of more value to this country, and is of more value to the progress of civilization, the cause of humanity, and the good understanding between nations, than could be readily computed. What was the state and condition of this country, sir, on the borders and frontiers, at the time of this treaty? Why, it was the time when the "patriot societies" or "Hunters' Lodges" were all in operation—when companies were formed and officers appointed by secret associations, to carry on the war in Canada; and, as I have said already, the disturbances were so frequent and so threatening, that the United States government dispatched General Scott to the frontier to make a draught on New York for milltia in order to preserve the peace of the border. And

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now, sir, what was it that repressed these disorders, and restored the peace of the border? Nothing, sir, nothing but a provision between the two governments, that if those "patriots" and "barn-burners" went from one side to the other to destroy their neighbors' property, trying to bring on a war all the time, —for that was their object—they should be delivered up to be punished. As soon as that provision was agreed to, the disturbances ceased, on one side and on the other: they were heard of no more. In the formation of this clause of the treaty I had the advantage of consultation with a venerable friend near me, one of the members from Michigan [Mr. Woodbridge]. He pressed me not to forego the opportunity of introducing some such provision. He examined it; and I will ask him if he knows any other cause for the instantaneous suppression of these border difficulties than this treaty provision?

Mr. Woodbridge rose, and said, in reply, as follows:

Mr. President, I may not disregard the reference which the gentleman has done me the honor to make to me in regard to the inconsiderable part which I deemed it my duty to take in the matter alluded to. A brief statement of some facts which occurred, and a glance, simply, at the condition of that border country from which I come, will be all that the occasion seems to demand.

That part of Canada with which the people of Michigan are brought more immediately in contact, extends from the head of Lake Erie to Point Edwards, at the lower extremity of Lake Theron, a distance of about 100 miles. Along this intermediate distance, the Straits of Detroit and of Sinclair furnish every imaginable facility for the escape of fugitives. For their entire length, the shores of those straits, on either side, exhibit lines of dense and continuous settlement. Their shores are lined, and their smooth surface covered with boats and vessels of all dimensions and descriptions, from the bark canoe to the steamer of a thousand tons. If the perpetrator of crime can reach a bark canoe or a light skiff, and detach himself from the shore, he may in a few minutes defy pursuit, for he will be within a foreign jurisdiction. In *such* a condition of things, no society can be safe unless there be some power to reclaim fugitives from justice. While your colonial government existed there, and its executive administration, under the control of this national government, was in the hands of my honorable colleague, a conventional arrangement—informal, undoubtedly, in its character—was entered into by him with the authorities of Canada, sustained by local legislation on both sides, by which these evils were greatly lessened. When the present state government took the place of the territorial government, this arrangement of necessity ceased; and then the evils alluded to were

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greatly aggravated, and became eminently dangerous. Shortly before the first session of Congress, at which I attended, after the inauguration of General Harrison, a very aggravated case of crime occurred, and its perpetrators, as usual, escaped into Canada. It was made the subject of an official communication to the State Legislature: and soon after my arrival here, I deemed it to be my duty to lay the matter before the Secretary of State, with a view to the adoption of some appropriate convention with Great Britain.

The honorable senator — then Secretary of State — was pleased to receive the suggestion favorably, but suggested to me the expediency of obtaining, if practicable, the sense of the Senate on the subject. Accordingly, I afterward introduced a resolution here, having that object in view, and it was referred to the consideration of the Committee on Foreign Relations, of which an honorable senator from Virginia, not now a member of the Senate, was chairman.

Mr. Rives expressed himself very decidedly in favor of the proposition. But, negotiations having been begun, or being about to commence, with Lord Ashburton, it was not deemed expedient, I believe, that it should then be made matter of discussion in the Senate. I had not ceased to feel very earnest solicitude on the subject; and, as the negotiation approached its termination, Mr. Webster did me the honor to send me the *project* of that article of the treaty which relates to the subject. He desired me to consider it, and to exhibit it, confidentially perhaps, to such senators as came from border states, for their consideration, and for such modification of its terms and scope as they might deem expedient. This I did. The form and scope of the article met, I believe, with the approbation of all to whom I showed it. Nor was any modification suggested, except, perhaps, one very immaterial one, suggested by an honorable senator from New York. Of all this I advised Mr. Webster, and the project became afterward an article of the treaty, with but little, if any variation. I believe I can throw no more light on the subject, sir. But the honorable senator, having intimated to me that, in his discussion of the subject, he *might, perhaps,* have occasion to refer to the part I took in the matter, I have provided myself with the copy of the message to the Legislature of Michigan, of which I had in the beginning made use, and which, in order to show the extent of the evil referred to, and the necessity which existed for some treaty stipulation on the subject, I ask the secretary to read.* (The

* The secretary here read an extract from Mr. Woodbridge, when Governor of Michigan, to the Legislature of that state, calling its attention earnestly to the facilities which exist along the interior boundaries of the United States for the escape of fugitives from justice; and saying, that a very recent occurrence, of the

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extract having been read, Mr. Woodbridge then proceeded): I have now only to add my entire and unqualified conviction, that no act of the legislative or treaty-making power that I have ever known, has ever been more successful in its operation than this article of the treaty; nor could any provision have been attended by more happy consequences upon the peace and safety of society in that remote frontier.

Mr. Webster resumed. I am happy to find that, in its operation, the provision has satisfied those who felt an interest in its adoption. But I may now state, I suppose without offense and without cavil, that since the negotiation of this treaty, containing this article, we have negotiated treaties with other governments of Europe containing similar provisions, and that between other governments of Europe themselves, treaties have been negotiated containing that provision: a provision never before known to have existed in any of the treaties between European nations. I am happy to see, therefore, that it has proved itself to be useful to the citizens of the United States, for whose benefit it was devised and adopted; that it has proved itself worthy of favor and imitation in the judgment of the most enlightened nations of Europe; and that it has never been complained of by any body, except by murderers, and fugitives, and felons themselves.

Now, sir, comes the matter of the African squadron, to which I am induced to turn my attention for a moment, out of sincere respect to the member from Arkansas [Mr. Sevier], who suggested the other day that to that article he had objection. There is no man whose opinions are more independent than those of that gentleman, and no one maintains them with more candor. But, if I understood him, he appears to think that that article gave up the right of search. What does he mean? We never claimed that right. We had no such right to give up; or does it mean exactly the opposite of what he says, that it yielded to England her claim of such right? No such thing. The arrangement made by this treaty was designed to carry into effect those stipulations in the Treaty of Ghent which we thought binding on us, as well as to effect an object important to this country, to the interests of humanity, and to the general cause of civilization throughout the world, without raising the difficulty of the right of search. The object of it was to accomplish all that in a way that should avoid the possibility of subjecting our vessels, under any pretense, to the right of search. I will not dwell on this. But allow me to state the

most painful and atrocious character, had compelled his own attention to it, and recommending, in strong terms, that the *peculiar* situation of Michigan, in this respect, should be laid before Congress, with a view of urging the expediency of some negotiation on the subject between the United States and England.

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sentiments on this subject of persons in the service of the United States abroad, whose opinions are entitled to respect. There is a letter sent to the Department of State by Mr. Wheaton, dated Berlin, November 15th, 1842. [Mr. Webster read from this letter an extract expressive of the writer's approbation of this article of the treaty as particularly well adapted to the end proposed, and by which, for the first time, the policy of the United States in this respect might be said to have exercised a decided influence upon that of Europe. *Vide* Appendix.]

I am quite willing (said Mr. Webster) to rest on this opinion of Mr. Wheaton as to the propriety and safety, the security and the wisdom of the article in this treaty respecting the suppression of the African slave trade by a squadron of our own, against any little artillery that may be used against it here. I beg the gentleman's pardon, I did not allude to his opinion; I have for him the highest respect. I was thinking of what is said in some of these "documents." But I need not stop here. Upon the appearance of this treaty between the United States and England, the leading states of Europe did, in fact, alter their whole policy on this subject. The treaty of 1841 between the Five Powers had not been ratified by France. There was so much opposition to it in France, on the ground that it gave the right of search to the English cruisers, that the king and M. Guizot, though the treaty was negotiated according to their instructions, did not choose to ratify it. I have stated the cause of popular indignation against it. Well, what was done? I'll tell you. When this Treaty of Washington became known in Europe, the wise men of the two countries, who wished to do all they could to suppress the African slave trade, and to do it in a manner securing in the highest degree the immunity of the flag of either, and the supremacy of neither, agreed to abandon the quintuple treaty of 1841—the unratified treaty: they gave it up.

They adopted the Treaty of Washington as their model; and I have now in my hand the Convention between France and England, signed in London on the 29th of May, 1845, the articles of which, in respect to the manner of putting an end to the slave trade, embody exactly the provisions contained in the Treaty of Washington. Thus it is seen that France has borrowed, from the treaty stipulations between the United States and England, the mode of fulfilling her own duties and accomplishing her own purpose, in perfect accordance with the immunity of her flag. I need hardly say, sir, that France is the nation which was earliest, and has been most constantly wakeful, in her jealousy of the supremacy of the maritime power of England. She has kept her eye on it, steadily, for centuries. The immunity of flags is a deep principle—it is a sentiment—

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one may almost say it is a passion, with all the people of France; and France, jealous, quick of perception, thoroughly hostile to any extension of the right of maritime search or visit, under any pretenses whatever, has seen, in the example of the Treaty of Washington, a mode of fulfilling her duties, for the suppression of the African slave trade, without disturbing the most sensitive of all her fears.

Allow me, sir, to read the 8th and 9th articles of the Treaty of Washington, and the 1st, 2d, and 3d articles of the Convention between England and France. [Mr. Webster read these articles. *Vide* Appendix.]

Mr. President, there is another topic on which I have to say a few words. It has been said that the Treaty of Washington, and the negotiations accompanying it, leave the great and interesting question of impressment where they found it. With all humility and modesty, I must beg to express my dissent from that opinion. I must be permitted to say, that the correspondence connected with the negotiation of that treaty, although impressment was not in the treaty itself, has, in the judgment of the world, or at least of considerable and respectable persons in the world, been regarded as not having left the question of impressment where it found it, but as having advanced the true doctrine in opposition to it to a higher and stronger foundation. The letter addressed on that subject from the Department of State to the British plenipotentiary, and his answer, are among the papers. I only wish the letter to be read. It recites the general history of the question between England and the United States. Lord Ashburton had no authority to make stipulations on the subject; but that is a circumstance which I do not regret, because I do not deem the subject as one at all proper for treaty stipulation. [Mr. Webster here read extracts from the letter, and, among others, this:]

"In the early disputes between the two governments, on this so-long contested topic, the distinguished person to whose hands were first intrusted the seals of this department, declared, that 'the simplest rule will be, that the vessel being American, shall be evidence that the seamen on board are such.'

"Fifty years' experience, the utter failure of many negotiations, and a careful reconsideration now had of the whole subject, at a moment when the passions are laid, and no present interest or emergency exists to bias the judgment, have fully convinced this government that this is not only the simplest and best, but the only rule which can be adopted and observed, consistently with the rights and honor of the United States, and the security of their citizens. That rule announces, therefore, what will hereafter be the principle maintained by their government. IN EVERY REGULARLY DOCUMENTED AMERICAN MERCHANT VESSEL, THE CREW WHO NAVIGATE IT WILL FIND THEIR PROTECTION IN THE FLAG WHICH IS OVER THEM."

And then proceeded: This declaration will stand, not on account of any particular ability displayed in the letter which it concludes, still less on account of the name subscribed to it; but it will stand, because it announces the true principles of pub-

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lic law; because it announces the great doctrine of the equality and independence of nations upon the seas; and because it declares the determination of the government and the people of the United States to uphold those principles, and to maintain that doctrine, through good report and through evil report, forever. We shall negotiate no more, nor attempt to negotiate more, about impressment. We shall not treat hereafter of its limitation to parallels of latitude and longitude. We shall not treat of its allowance or disallowance in broad seas or narrow seas. We shall think no more of stipulating for exemption, from its exercise, of some of the persons composing crews. Henceforth the deck of every American vessel is inaccessible for any such purpose. It is protected, guarded, defended by the declaration which I have read, and that declaration will stand.

Sir, another most important question of maritime law, growing out of the case of the "Creole," and other similar cases, was the subject of a letter to the British plenipotentiary, and of an answer from him. An honorable member from South Carolina (Mr. Calhoun) had taken, as is well known, a great interest in the matter involved in that question. He had expressed his opinion of its importance here, and had been sustained by the Senate. Occasion was taken of Lord Ashburton's mission to communicate to him and to his government the opinions which this government entertained; and I would now ask the honorable member if any similar cause of complaint has since arisen. [Mr. Calhoun said he had heard of none.] I trust, sir, that none will arise hereafter. I refer to the letter to Lord Ashburton on this subject, as containing what the American government regarded as the true principle of the maritime law, and to his very sensible and proper answer.

Mr. President, I have reached the end of these remarks, and the completion of my purpose; and I am now ready, sir, to put the question to the Senate, and to the country, whether the north-eastern boundary has not been fairly and satisfactorily settled; whether proper satisfaction and apology have not been obtained for an aggression on the soil and territory of the United States; whether proper and safe stipulations have not been entered into for the fulfillment of the duty of the government, and for meeting the earnest desire of the people in the suppression of the slave trade; whether, in pursuance of these stipulations, a degree of success in the attainment of that object has not been reached wholly unknown before; whether crimes, disturbing the peace of nations, have not been suppressed; whether the safety of the southern coasting trade has not been secured; whether impressment has not been struck out from the list of contested questions among nations; and finally, and more than all, whether any thing has been done to tarnish the luster of the American name and character?

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Mr. President, my best services, like those of every other good citizen, are due to my country; and I submit them, and their results, in all humility, to her judgment. But standing here to-day, in the Senate of the United States, and speaking in behalf of the administration of which I formed a part, and in behalf of the two houses of Congress who sustained that administration, cordially and effectually, in every thing relating to this day's discussion, I am willing to appeal to the public men of the age, whether, in 1842, and in the city of Washington, something was not done for the suppression of crime, for the true exposition of the principles of public law, for the freedom and security of commerce on the ocean, and for the peace of the world.

APPENDIX.

Mr. Wheaton to Mr. Webster.

BERLIN, *November* 15, 1842.

SIR,—Your dispatch No. 36, inclosing a copy of the treaty recently concluded at Washington, between the United States and Great Britain, has just reached me. I beg leave to congratulate you, sir, on the happy termination of this arduous negotiation, in which the rights, honor, and interests of our country have been so successfully maintained. The arrangement it contains on the subject of the African slave trade is particularly satisfactory, as adapted to secure the end proposed by the only means consistent with our maritime rights. This arrangement has decided the course of the French government in respect to this matter. Its embassador in London notified to the conference of the five great powers the final determination of France not to ratify the treaty of December, 1841, and, at the same time, expressed her disposition to fulfill the stipulations of the separate treaties of 1831 and 1834, between her and Great Britain. The treaty of 1841, therefore, now subsists only between four of the great powers by whom it was originally concluded; and as three of these (Austria, Prussia, and Russia) are very little concerned in the navigation of the ocean and the trade in the African seas, and have, besides, taken precautions in the treaty itself to secure their commerce from interruption by the exercise of the right of search in other parts, this compact may now be considered as almost a dead letter.

The policy of the United States may consequently be said, on this occasion, perhaps for the first time, to have had a most decisive influence on that of Europe. This will probably more frequently occur hereafter; and it should be an encouragement to us to cultivate our maritime resources, and to strengthen our naval arm, by which alone we are known and felt among the nations of the earth.

Convention between Her Majesty and the King of the French for the Suppression of the Traffic in Slaves.—[EXTRACT.]

ARTICLE I. In order that the flags of her majesty the Queen of the United Kingdom of Great Britain and Ireland, and of his majesty the King of the French, may not, contrary to the law of nations and the laws in force in the two countries, be usurped to cover the slave trade, and in order to provide for the more effectual suppression of that traffic, his majesty the King of the French engages, as soon as may be practicable, to station on the west coast of Africa, from Cape Verd to 16° 30′ south latitude, a naval force of at least twenty-six cruisers, consisting of sailing and steam vessels; and her majesty the Queen of the United Kingdom of Great Britain and Ireland engages, as soon as may be practicable, to station on the same part of the west coast of Africa a naval force of not less than twenty-six cruisers, consisting of sailing vessels and steam vessels; and on the east coast of Africa such number of cruisers as her majesty shall judge sufficient for the prevention of the

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trade on that coast; which cruisers shall be employed for the purposes above mentioned, in conformity with the following stipulations.

ARTICLE II. The said British and French naval forces shall act in concert for the suppression of the slave trade. It will be their duty to watch strictly every part of the west coast of Africa within the limits described in Article I., where the slave trade is carried on. For this purpose they shall exercise fully and completely all the powers vested in the crowns of Great Britain and France for the suppression of the slave trade, subject only to the modifications hereinafter mentioned as to British and French ships.

ARTICLE III. The officers of her majesty the Queen of the United Kingdom of Great Britain and Ireland, and of his majesty the King of the French, having respectively the command of the squadrons of Great Britain and France, to be employed in carrying out this Convention, shall concert together as to the best means of watching strictly the parts of the African coast before described, by selecting and defining the stations, and committing the care thereof to English and French cruisers, jointly or separately, as may be deemed most expedient; provided always, that in case of a station being specially committed to the charge of cruisers of either nation, the cruisers of the other nation may at any time enter the same for the purpose of exercising the rights respectively belonging to them for the suppression of the slave trade.

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RELATIONS WITH MEXICO.

Message from the President of the United States, transmitting Copies of Papers upon the Subject of the Relations between the United States and the Mexican Republic, July 14, 1842.

To the House of Representatives of the United States:

In answer to the resolution of the House of Representatives of the 12th instant, requesting copies of papers upon the subject of the relations between the United States and the Mexican Republic, I transmit a report from the Secretary of State, and the documents by which it was accompanied.

JOHN TYLER.

WASHINGTON, *July* 14, 1842.

To the President of the United States:

SIR,—The Secretary of State, to whom was referred the reso ution of the House of Representatives of yesterday, requesting the President to cause to be communicated to that House, so far as might be compatible with the public interest, copies of all the correspondence between the governments of the United States and of Mexico, since the appointment of the present envoy extraordinary and minister plenipotentiary of the United States to Mexico; of the instructions given to that minister at and since his departure upon his mission, and of his dispatches to this government, and particularly of any complaint of the government of Mexico, alleging the toleration, by the government of the United States, of hostile interference by their citizens in the war between Mexico and Texas, and of any answer, on the part of this government, to such complaint, has the honor to lay before the President the papers mentioned in the accompanying list.

All which is respectfully submitted.

DANIEL WEBSTER.

DEPARTMENT OF STATE, *Washington, July* 13, 1842.

Mr. Velazquez de Leon to Mr. Webster.—[TRANSLATION.]

NEW YORK, *June* 24, 1842.

The undersigned, in addressing the Hon. Daniel Webster, Secretary of State, has the honor to inform him that, although he holds in his power the appointment and credentials for presenting himself and acting as chargé d'affaires of Mexico in the United States, he has not thought proper to present himself for

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that purpose, until he had received the answer to the observations which he had addressed to his own government on that subject; but as he has received recently, and during this delay, the two annexed documents for his excellency the President and the Hon. Daniel Webster, he hastens to send them on, in order that, upon their arriving as soon as possible at their destination, the honorable Secretary of State may give such answer as the government of the United States may judge proper; which answer the undersigned will transmit to the Mexican government, according to his instructions to that effect.

The undersigned avails himself of this occasion to renew to the Hon. Daniel Webster, Secretary of State, the assurances of his high consideration.

JOAQUIN VELAZQUEZ DE LEON

Hon. DANIEL WEBSTER, *Secretary of State.*

Mr. Webster to Mr. Velazquez de Leon.

DEPARTMENT OF STATE, *Washington, June* 29, 1842.

SIR,—Your letter of the 24th of this month, transmitting one addressed to this department by the Secretary of State and Foreign Relations of the Mexican Republic, was duly received.

The President has long desired to see here a representative of that government, the residence of such a functionary being esteemed likely to foster and promote the peace and interests of the two countries. We are happy to hear that an appointment has at length been made; and all just respect will be paid to your credentials, whenever it shall be your pleasure to present them. Until such presentment be made, however, no regular diplomatic intercourse can be had between this department and yourself. Whatever answer may be judged proper to the letter of Mr. De Bocanegra to this department will be transmitted through the minister of the United States at Mexico.

I am, sir, your obedient servant,

DANIEL WEBSTER.

Señor Don JOAQUIN VELAZQUEZ DE LEON.

Mr. De Bocanegra to Mr. Webster.—[TRANSLATION.]

NATIONAL PALACE, *Mexico, May* 12, 1842.

The undersigned, Secretary of State and Foreign Relations, enjoys the satisfaction of addressing the honorable Secretary of State of the United States of America, in the name and by the express order of his excellency the President of the Mexican Republic. The relations of amity and good harmony which have happily subsisted between this and your great nation might have been disturbed in a lamentable manner, since the year 1835, when the revolution of Texas broke out, if the

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Mexican government had not given so many evidences of its forbearance, and had not made so many and so great sacrifices for the sake of peace, in order that the world might not, with pain and amazement, see the two nations which appear to be destined to establish the policy and the interests of the American continent divided and ravaged by the evils of war.

But, from that truly unfortunate period, the Mexican Republic has received nothing but severe injuries and inflictions from the citizens of the United States. The Mexican government speaks only of the citizens of the United States, as it still flatters itself with the belief that it is not the government of that country which has promoted the insurrection in Texas, which has favored the usurpation of its territory, and has supplied the rebels with ammunition, arms, vessels, money, and recruits; but that these aggressions have proceeded from private individuals, who have not respected the solemn engagements which bind together the two nations, nor the treaties concluded between them, nor the conduct, ostensibly frank, of the cabinet of Washington.

It is, however, notorious, that the insurgent colonists of that integral part of the territory of the Mexican Republic would have been unable to maintain their prolonged rebellion, without the aid and the efficient sympathies of citizens of the United States, who have publicly raised forces in their cities and towns; have fitted out vessels in their ports, and laden them with munitions of war; and have marched to commit hostilities against a friendly nation, under the eyes and with the knowledge of the authorities to whom are intrusted the fulfillment of the law.

The Mexican government entertains so high an opinion of the force of the government of the United States, and of its power to restrain those its subjects from violating the religious faith of treaties, solemnly concluded between it and other nations, and from committing hostilities against such nations in time of peace, that it can not easily comprehend how those persons have been able to evade the punishment decreed against them by the laws of the United States themselves, and to obtain that quiet impunity which incessantly encourages them to continue their attacks. It is well worthy of remark, that, no sooner does the Mexican government, in the exercise of its rights, which it can not and does not desire to renounce, prepare means to recover a possession usurped from it, than the whole population of the United States, especially in the Southern States, is in commotion; and in the most public manner, a large portion of them is turned upon Texas, in order to prevent the rebels from being subjected by the Mexican arms, and brought back to proper obedience.

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Could proceedings more hostile, on the part of the United States, have taken place, had that country been at war with the Mexican Republic? Could the insurgents of Texas have obtained a co-operation more effective or more favorable to their interests? Certainly not. The civilized world looks on with amazement, and the Mexican government is filled with unspeakable regret, as it did hope, and had a right to hope, that, living in peace with the United States, your government would preserve our territory from the invasions of your own subjects. The vicinity of a friend is an advantage rather than an inconvenience; but if one neighbor oversteps the sacred limits imposed by treaties, and disturbs and harasses another, it can not be maintained that the friendship of the former is real, and that much confidence should be placed in it.

The government of the Mexican Republic, therefore, which regards the faithful fulfillment of treaties as its highest obligation, which anxiously desires to preserve and increase its friendly relations with the people and the government of the United States, finds itself under the necessity of protesting solemnly against the aggressions which the citizens of those states are constantly repeating upon the Mexican territory, and of declaring, in a positive manner, that it considers as a violation of the treaty of amity the toleration of a course of conduct which produces an incomprehensible state of things—a state neither of peace nor war—but inflicting upon the Mexican Republic the same injuries and inconveniences as if war had been declared between the two nations, which are called by Providence to form with each other relations and bonds of extreme and cordial friendship.

And the undersigned, in complying with this order from the most excellent Provisional President of the Republic of Mexico, assures you, sir, of the high consideration with which he remains your obedient servant, J. M. DE BOCANEGRA.

Hon. DANIEL WEBSTER, *Secretary of State of the United States of America.*

Mr. Webster to Mr. Thompson.—[COPY.]

DEPARTMENT OF STATE, *Washington, July* 8, 1842.

SIR,—On the 29th of last month, a communication was received at this department from Mr. De Bocanegra, Secretary of State and Foreign Relations of the government of Mexico, having been forwarded through the agency of Mr. Velazquez de Leon, at New York, who informed the department, by a letter accompanying that of Mr. De Bocanegra, that he had been appointed chargé d'affaires of the Mexican Republic to this government, although he had not yet presented his credentials. Mr. De Bocanegra's letter is addressed to the Secretary of State of the United States, and bears date the 12th of May.

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A copy, together with a copy of the communication from Mr. Velazquez de Leon, transmitting it, and of the answer to Mr. Velazquez de Leon from this department, you will receive herewith. Upon the receipt of this dispatch, you will immediately address a note to Mr. De Bocanegra, in which you will say, that

The Secretary of State of the United States has received a letter addressed to him by Mr. De Bocanegra, under date of the 12th of May, and transmitted to the Department of State, at Washington, through the agency of Mr. Velazquez de Leon, at New York, who informs the government of the United States that he has been appointed chargé d'affaires of the Mexican Republic, although he has not presented his letter of credence.

The government of the United States sees with regret the adoption, on this occasion, of a form of communication quite unusual in diplomatic intercourse, and for which no necessity is known. An envoy extraordinary and minister plenipotentiary of the United States, fully accredited to the government of Mexico, was at that moment in its capital, in the actual discharge of his functions, and ready to receive on behalf of his government any communication which it might be the pleasure of the President of the Mexican Republic to make to it. And it is not improper to here add, that it has been matter of regret with the government of the United States, that while, being animated with a sincere desire at all times to cultivate the most amicable relations with Mexico, it has not failed to maintain, near that government, a mission of the highest rank known to its usages, Mexico, for a long time, has had no representative near the government of the United States.

But the manner of the communication from Mr. De Bocanegra, however novel and extraordinary, is less important than its contents and character, which surprise the government of the United States, by a loud complaint of the violation of its neutral duties. Mr. De Bocanegra, speaking, as he says, by the express order of the President of the Mexican Republic, declares that the amicable relations between the two countries might have been lamentably disturbed since the year 1835, when the revolution of Texas broke out, had not Mexico given so many evidences of its forbearance, and made so many and so great sacrifices for the sake of peace, in order that the world might not see, with pain and amazement, two nations which appear destined to establish the policy and interests of the American continent divided and ravaged by the evils of war.

This language implies that such has been the conduct of the United States toward Mexico, that war must have ensued before the present time, had not Mexico made great sacrifices to

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avoid such a result: a charge which the government of the United States utterly denies and repels. It is wholly ignorant of any sacrifices made by Mexico in order to preserve peace, or of any occasion calling on its government to manifest uncommon forbearance. On the contrary, the government of the United States can not but be of opinion that, if the history of the occurrences between the two governments, and the state of things at this moment existing between them, be regarded, both the one and the other will demonstrate that it is the conduct of the government of the United States which has been marked, in an especial manner, by moderation and forbearance. Injuries and wrongs have been sustained by citizens of the United States, not inflicted by individual Mexicans, but by the authorities of the government; for which injuries and wrongs, numerous as they are, and outrageous as is the character of some of them, and acknowledged as they are by Mexico herself, redress has been sought only by mild and peaceable means, and no indemnity asked but such as the strictest justice imperatively demanded. A desire not to disturb the peace and harmony of the two countries has led the government of the United States to be content with the lowest measure of remuneration. Mexico herself must admit that, in all these transactions, the conduct of the United States toward her has been signalized, not by the infliction of injuries, but by the manifestation of a friendly feeling and a conciliatory spirit.

The government of the United States will not be unjust in its sentiments toward Mexico; it will not impute to its government any desire to disturb the peace; it acquits it of any design to spread the ravages and horrors of war over the two countries; and it leaves it to Mexico herself to avow her own motives for her pacific policy, if she have any other motive than those of expediency and justice; provided, however, that such avowal of her motives carry with it no imputation or reflection upon the good faith and honor of the United States.

The revolution in Texas, and the events connected with it and springing out of it, are Mr. De Bocanegra's principal topic; and it is in relation to these that his complaint is founded. His government, he says, flatters itself that the government of the United States has not promoted the insurrection in Texas, favored the usurpation of its territory, or supplied the rebels with vessels, ammunition, and money. If Mr. De Bocanegra intends this as a frank admission of the honest and cautious neutrality of the government of the United States in the contest between Mexico and Texas, he does that government justice, and no more than justice; but if the language be intended to intimate an opposite and a reproachful meaning, that meaning is only the more offensive for being insinuated rather than distinctly

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avowed. Mr. De Bocanegra would seem to represent that, from 1835 to the present time, citizens of the United States, if not their government, have been aiding rebels in Texas in arms against the lawful authority of Mexico. This is not a little extraordinary. Mexico may have chosen to consider, and may still choose to consider, Texas as having been at all times, since 1835, and as still continuing, a rebellious province; but the world has been obliged to take a very different view of the matter. From the time of the battle of San Jacinto, in April, 1836, to the present moment, Texas has exhibited the same external signs of national independence as Mexico herself, and with quite as much stability of government. Practically free and independent, acknowledged as a political sovereignty by the principal powers of the world, no hostile foot finding rest within her territory for six or seven years, and Mexico herself refraining, for all that period, from any further attempt to re-establish her own authority over that territory, it can not but be surprising to find Mr. De Bocanegra complaining that, for that whole period, citizens of the United States, or its government, have been favoring the rebels of Texas, and supplying them with vessels, ammunition, and money, as if the war for the reduction of the province of Texas had been constantly prosecuted by Mexico, and her success prevented by these influences from abroad!

The general facts appertaining to the settlement of Texas, and the revolution in its government, can not but be well known to Mr. De Bocanegra. By the treaty of the 22d of February, 1819, between the United States and Spain, the Sabine was adopted as the line of boundary between the two powers. Up to that period, no considerable colonization had been effected in Texas; but the territory between the Sabine and the Rio Grande being confirmed to Spain by the treaty, applications were made to that power for grants of land; and such grants, or permissions of settlement, were, in fact, made by the Spanish authorities in favor of citizens of the United States proposing to emigrate to Texas in numerous families, before the declaration of independence by Mexico. And these early grants were confirmed, as is well known, by successive acts of the Mexican government, after its separation from Spain. In January, 1823, a national colonization law was passed, holding out strong inducements to all persons who should incline to undertake the settlement of uncultivated lands; and although the Mexican law prohibited for a time citizens of foreign countries from settling, as colonists, in territories immediately adjoining such foreign countries, yet even this restriction was afterward repealed or suspended; so that, in fact, Mexico, from the commencement of her political exist-

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ence, held out the most liberal inducements to emigrants into her territories, with full knowledge that these inducements were likely to act, and expecting they would act, with the greatest effect upon citizens of the United States, especially of the Southern States, whose agricultural pursuits naturally rendered the rich lands of Texas, so well suited to their accustomed occupation, objects of desire to them. The early colonists of the United States, introduced by Moses and Stephen Austin under these inducements and invitations, were persons of most respectable character, and their undertaking was attended with very severe hardships, occasioned in no small degree by the successive changes in the government of Mexico. They nevertheless persevered, and accomplished a settlement. And, under the encouragements and allurements thus held out by Mexico, other emigrants followed, and many thousand colonists from the United States and elsewhere had settled in Texas, within ten years from the date of Mexican independence. Having some reason to complain, as they thought, of the government over them, and especially of the aggressions of the Mexican military stationed in Texas, they sought relief by applying to the supreme government for the separation of Texas from Coahuila, and for a local government for Texas itself. Not having succeeded in this object, in the process of time, and in the progress of events, they saw fit to attempt an entire separation from Mexico, to set up a government of their own, and to establish a political sovereignty. War ensued; and the battle of San Jacinto, fought on the 21st of April, 1836, achieved their independence. The war was from that time at an end, and in March following the independence of Texas was formally acknowledged by the government of the United States.

In the events leading to the actual result of these hostilities the United States had no agency, and took no part. Its government had, from the first, abstained from giving aid or succor to either party. It knew its neutral obligations, and fairly endeavored to fulfill them all. It acknowledged the independence of Texas only when that independence was an apparent and an ascertained fact; and its example in this particular has been followed by several of the most considerable powers of Europe.

It has been sometimes stated, as if for the purpose of giving more reason to the complaints of Mexico, that, of the military force which acted against Mexico with efficiency and success in 1836, a large portion consisted of volunteers then fresh from the United States. But this is a great error. It is well ascertained, that of those who bore arms in the Texan ranks in the battle of San Jacinto, three fourths, at least, were colonists, invited into Texas by the grants and the colonization laws of

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Mexico, and called to the field by the exigencies of the times in 1836, from their farms and other objects of private pursuit.

Mr. De Bocanegra's complaint is two-fold: first, that citizens of the United States have supplied the rebels in Texas with ammunition, arms, vessels, money, and recruits; have publicly raised forces in their cities and fitted out vessels in their ports, loaded them with munitions of war, and marched to commit hostilities against a friendly nation, under the eye and with the knowledge of the public authorities of the United States. In all this Mr. De Bocanegra appears to forget that, while the United States are at peace with Mexico, they are also at peace with Texas; that both stand on the same footing of friendly nations; that, since 1837, the United States have regarded Texas as an independent sovereignty as much as Mexico; and that trade and commerce with citizens of a government at war with Mexico can not, on that account, be regarded as an intercourse by which assistance and succor are given to Mexican rebels. The whole current of Mr. De Bocanegra's remarks runs in the same direction, as if the independence of Texas had not been acknowledged. It has been acknowledged; it was acknowledged in 1837, against the remonstrance and protest of Mexico; and most of the acts of any importance of which Mr. De Bocanegra complains flow necessarily from that recognition. He speaks of Texas as still being "an integral part of the territory of the Mexican Republic;" but he can not but understand that the United States do not so regard it. The real complaint of Mexico, therefore, is, in substance, neither more nor less than a complaint against the recognition of Texan independence. It may be thought rather late to repeat that complaint, and not quite just to confine it to the United States, to the exemption of England, France, and Belgium, unless the United States, having been the first to acknowledge the independence of Mexico herself, are to be blamed for setting an example for the recognition of that of Texas. But it is still true that Mr. De Bocanegra's specification of his grounds of complaint and remonstrance is mainly confined to such transactions and occurrences as are the natural consequence of the political relations existing between Texas and the United States. Acknowledging Texas to be an independent nation, the government of the United States, of course, allows and encourages lawful trade and commerce between the two countries. If articles contraband of war be found mingled with this commerce, while Mexico and Texas are belligerent states, Mexico has the right to intercept the transit of such articles to her enemy. This is the common right of all belligerents, and belongs to Mexico in the same extent as to other nations. But Mr. De Bocanegra is quite well aware that it is not the practice of nations to undertake to pro-

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hibit their own subjects, by previous laws, from trafficking in articles contraband of war. Such trade is carried on at the risk of those engaged in it, under the liabilities and penalties prescribed by the law of nations or by particular treaties. If it be true, therefore, that citizens of the United States have been engaged in a commerce by which Texas, an enemy of Mexico, has been supplied with arms and munitions of war, the government of the United States, nevertheless, was not bound to prevent it, could not have prevented it, without a manifest departure from the principles of neutrality, and is in no way answerable for the consequences. The treaty of the 5th of April, 1831, between the United States and Mexico itself, shows most clearly how little foundation there is for the complaint of trading with Texas, if Texas is to be regarded as a public enemy of Mexico. The 16th article declares, "It shall likewise be lawful for the aforesaid citizens, respectively, to sail with their vessels and merchandise before mentioned, and to trade, with the same liberty and security, from the places, ports, and havens of those who are enemies of both or either party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy before mentioned to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of the same government, or under several."

The 18th article enumerates those commodities which shall be regarded as contraband of war; but neither that article nor any other imposes on either nation any duty of preventing, by previous regulation, commerce in such articles. Such commerce is left to its ordinary fate, according to the law of nations. It is only, therefore, by insisting, as Mr. De Bocanegra does insist, that Texas is still a part of Mexico, that he can maintain any complaint. Let it be repeated, therefore, that if the things against which he remonstrates be wrong, they have their source in the original wrong of the acknowledgment of Texan independence. But that acknowledgment is not likely to be retracted.

There can be no doubt at all that, for the last six years, the trade in articles contraband of war between the United States and Mexico has been greater than between the United States and Texas. It is probably greater at the present moment. Why has not Texas a right to complain of this? For no reason, certainly, but because the permission to trade, or the actual trading, by the citizens of a government, in articles contraband of war, is not a breach of neutrality.

Mr. De Bocanegra professes himself unable to comprehend how those persons of whom he complains have been able to

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evade the punishment decreed against them by the laws of the United States, but he does not appear to have a clear idea of the principles or provisions of those laws. The duties of neutral nations in time of war are prescribed by the law of nations, which is imperative and binding upon all governments; and nations not unfrequently establish municipal regulations for the better government of the conduct of their subjects or citizens.

This has been done by the United States, in order to maintain with greater certainty a strict and impartial neutrality pending war between other countries. And wherever a violation of neutral duties, as they exist by the law of nations, or any breach of its own laws, has been brought to the notice of the government, attention has always been paid to it.

At an early period of the Texan Revolution, strict orders were given by the President of the United States to all officers on the south and southwestern frontier, to take care that those laws should be observed; and the attention of the government of the United States has not been called to any specific violation of them since the manifestation on the part of Mexico of an intention to renew hostilities with Texas; and all officers of the government remain charged with the strict and faithful execution of these laws. On a recent occasion, complaint was made by the representatives of Texas that an armament was fitted out in the United States for the service of Mexico against Texas.

Two vessels of war, it was alleged, built or purchased in the United States, for the use of the government of Mexico, and well understood as intended to be employed against Texas, were equipped and ready to sail from the waters of New York. The case was carefully inquired into, official examination was made, and legal counsel invoked. It appeared to be a case of great doubt; but Mexico was allowed the benefit of that doubt; and the vessels left the United States, with the whole or a part of their armament actually on board. The same administration of even-handed justice, the same impartial execution of the laws toward all parties, will continue to be observed.

If forces have been raised in the United States, or vessels fitted out in their ports for Texan service, contrary to law, no instance of which has yet come to the knowledge of the government, prompt attention will be paid to the first case, and to all cases which may be made known to it. As to advances, loans, or donations of money or goods, made by individuals to the government of Texas or its citizens, Mr. De Bocanegra hardly needs to be informed that there is nothing unlawful in this, so long as Texas is at peace with the United States, and that these are things which no government undertakes to restrain. Other citizens are equally at liberty, should they be so

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inclined, to show their good-will toward Mexico by the same means. Still less can the government of the United States be called upon to interfere with opinions uttered in the public assemblages of a free people, accustomed to the independent expression of their sentiments, resulting in no violation of the laws of their country, or of its duties as a neutral state. Toward the United States, Mexico and Texas stand in the same relation as independent states at war. Of the character of that war, mankind will form their own opinions; and in the United States, at least, the utterance of those opinions can not be suppressed.

The second part of Mr. De Bocanegra's complaint is thus stated: "No sooner does the Mexican government, in the exercise of its rights, which it can not and does not desire to renounce, prepare means to recover a possession usurped from it, than the whole population of the United States, especially in the Southern States, is in commotion; and, in the most public manner, a large portion of them is directed upon Texas."

And how does Mr. De Bocanegra suppose that the government of the United States can prevent, or is bound to undertake to prevent, the people from thus going to Texas? This is emigration—the same emigration, though not under the same circumstances, which Mexico invited to Texas before the Revolution. These persons, so far as is known to the government of the United States, repair to Texas, not as citizens of the United States, but as ceasing to be such citizens, and as changing, at the same time, their allegiance and their domicil. Should they return, after having entered into the service of a foreign state, still claiming to be citizens of the United States, it will be for the authorities of the United States government to determine how far they have violated the municipal laws of the country, and what penalties they have incurred. The government of the United States does not maintain, and never has maintained, the doctrine of the perpetuity of natural allegiance. And surely Mexico maintains no such doctrine; because her actually existing government, like that of the United States, is founded in the principle that men may throw off the obligation of that allegiance to which they are born. The government of the United States, from its origin, has maintained legal provisions for the naturalization of such subjects of foreign states as may choose to come hither, make their home in the country, and, renouncing their former allegiance, and complying with certain stated requisitions, to take upon themselves the character of citizens of this government. Mexico herself has laws granting equal facilities to the naturalization of foreigners. On the other hand, the United States have not passed any law restraining their own citizens, native or naturalized, from leaving

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the country and forming political relations elsewhere. Nor do other governments, in modern times, attempt any such thing. It is true that there are governments which assert the principle of perpetual allegiance; yet, even in cases where this is not rather a matter of theory than practice, the duties of this supposed continuing allegiance are left to be demanded of the subject himself, when within the reach of the power of his former government, and as exigencies may arise; and are not attempted to be enforced by the imposition of previous restraint, preventing men from leaving their country.

Upon this subject of the emigration of individuals from neutral to belligerent states, in regard to which Mr. De Bocanegra appears so indignant, we must be allowed to bring Mexico into her own presence, to compare her with herself, and respectfully invite her to judge the matter by her own principles and her own conduct. In her great struggle against Spain for her own independence, did she not open her arms wide to receive all who would come to her from any part of the world? And did not multitudes flock to her new-raised standard of liberty, from the United States, from England, Ireland, France, and Italy, many of whom distinguished themselves in her service, both by sea and land? She does not appear to have supposed that the governments of these persons, thus coming to unite their fate with hers, were, by allowing the emigration, even pending a civil war, furnishing just cause of offense to Spain. Even in her military operations against Texas, Mexico employed many foreign emigrants; and it may be thought remarkable that, in those very operations, not long before the battle of San Jacinto, a native citizen of the United States held high command in her service, and performed feats of no mean significance in Texas. Of that toleration, therefore, as she calls it, and which she now so warmly denounces, Mexico in that hour of emergency embraced the benefits eagerly, and to the full extent of her power. May we not ask, then, how she can reconcile her present complaints with her own practice, as well as how she accounts for so long and unbroken a silence upon a subject on which her remonstrance is now so loud?

Spain chose to regard Mexico only in the light of a rebellious province for near twenty years after she had asserted her own independence. Does Mexico now admit that, for all that period, notwithstanding her practical emancipation from Spanish power, it was unlawful for the subjects and citizens of other governments to carry on with her the ordinary business of commerce, or to accept her tempting offers to emigrants?

Certainly such is not her opinion.

Might it not be asked, then, even if the United States had

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not already and long ago acknowledged the independence of Texas, how long they should be expected to wait for the accomplishment of the object, now existing only in purpose and intention, of the resubjugation of that territory by Mexico?

How long, let it be asked, in the judgment of Mexico herself, is the fact of actual independence to be held of no avail against an avowed purpose of future reconquest?

Mr. De Bocanegra is pleased to say that, if war actually existed between the two countries, proceedings more hostile, on the part of the United States, could not have taken place, nor the insurgents of Texas obtained more effectual co-operation than they have obtained.

This opinion, however hazardous to the discernment and just estimate of things of those who avow it, is yet abstract and theoretical, and, so far, harmless.

The efficiency of American hostility to Mexico has never been tried; the government has no desire to try it. It would not disturb the peace for the sake of showing how erroneously Mr. De Bocanegra has reasoned; while, on the other hand, it trusts that a just hope may be entertained that Mexico will not inconsiderately and needlessly hasten into an experiment by which the truth or fallacy of his sentiments may be brought to an actual ascertainment.

Mr. De Bocanegra declares, in conclusion, that his government finds itself under the necessity of protesting solemnly against the aggressions which the citizens of the United States are reiterating upon the Mexican territory, and of declaring, in a positive manner, that it will consider as a violation of the treaty of amity the toleration of that course of conduct, which he alleges inflicts on the Mexican Republic the injuries and inconveniences of war. The President exceedingly regrets both the sentiment and the manner of this declaration. But it can admit but of one answer. The Mexican government appears to require that which could not be granted, in whatever language or whatever tone requested. The government of the United States is a government of law.

The chief executive magistrate, as well as functionaries in every other department, is restrained and guided by the Constitution and the laws of the land. Neither the Constitution, nor the law of the land, nor principles known to the usages of modern states, authorizes him to interdict lawful trade between the United States and Texas, or to prevent, or attempt to prevent, individuals from leaving the United States for Texas or any other foreign country.

If such individuals enter into the service of Texas, or any other foreign state, the government of the United States no longer holds over them the shield of its protection. They

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must stand or fall in their newly-assumed character, and according to the fortunes which may betide it. But the government of the United States can not be called upon to prevent their emigration; and it must be added, that the Constitution, public treaties, and the laws oblige the President to regard Texas as an independent state, and its territory as no part of the territory of Mexico. Every provision of law, every principle of neutral obligation, will be sedulously enforced in relation to Mexico, as in relation to other powers, and to the same extent, and with the same integrity of purpose. All this belongs to the constitutional power and duty of the government, and it will all be fulfilled. But the continuance of amity with Mexico can not be purchased at any higher rate. If the peace of the two countries is to be disturbed, the responsibility will devolve on Mexico. She must be answerable for consequences. The United States, let it be again repeated, desire peace. It would be with infinite pain that they should find themselves in hostile relations with any of the new governments on this Continent. But their government is regulated, limited, full of the spirit of liberty, but surrounded, nevertheless, with just restraints; and, greatly and fervently as it desires peace with all states, and especially with its more immediate neighbors, yet no fear of a different state of things can be allowed to interrupt its course of equal and exact justice to all nations, nor to jostle it out of the constitutional orbit in which it revolves.

I am, sir, your obedient servant,

DANIEL WEBSTER.

WADDY THOMPSON, JR., Esq., &c.

Mr. De Bocanegra to Mr. Webster.—[TRANSLATION.]

NATIONAL PALACE, *Mexico, May* 31, 1842.

The undersigned, Minister of Foreign Relations and Government of the Mexican Republic, had the honor, a few days since, to address the Honorable Secretary of State of the United States, in order to protest formally against the government of that Republic, in the name of his Excellency the Provisional President, on account of the continual hostilities and aggressions of citizens of the United States against the Mexican territory; and, although he might hope for a flattering result in the change of proceedings, he finds himself, in consequence of the continuation of those proceedings, under the necessity of again calling the attention of the Secretary of State to the undeniable toleration which has been and is still afforded to the enemies of a nation sincerely friendly, and bound by the solemn compacts of a treaty, which unites the two republics.

In that note the undersigned, after setting before the Secretary the prudence with which the government of Mexico has

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sought, ever since the commencement of the revolution of Texas, to conduct all its relations with the United States, so as to avoid a rupture between the two nations, which, from their importance and other serious considerations, seem destined to fix the policy and the lot of the vast and rich Continent of America, he flattered himself with the idea that the cabinet of Washington would not protect, either openly or secretly, or in any way, the scandalous usurpation of an acknowledged portion of the national territory. He, however, regrets that he must judge from facts, open to all the world, that the very cabinet of the United States, and the subaltern and local authorities, do observe a conduct openly at variance with the most sacred principles of the law of nations and the solemn compacts of amity existing between the two nations; sufficient proof being afforded by the consent given to the formation of the most tumultuous public assemblies, in various parts of the United States themselves, to the equipment of armaments, and the embarkation of volunteers in large bodies, and to the preparation and disposal of every thing calculated to contribute to aid the Texans, and to the invasion of a neighboring and friendly republic.

The Mexican government can not understand such conduct; and, being itself frank in its proceedings, and animated at the same time by a sincere desire that the relations now existing between this republic and the United States should not suffer the slightest alteration, it considers itself bound in duty to repeat, with every formality, its former protest against such toleration; the continuance of which it will regard as a positive act of hostility against this republic, which will regulate the conduct to be observed by it agreeably to the dictates of justice and to the interests and dignity of the nation.

The undersigned hopes that the secretary will be pleased to reply with that promptness which the importance of the subject requires; and he avails himself, with pleasure, of this opportunity to repeat to that gentleman the assurance of his most distinguished consideration, with which he remains, &c.,

J. M. DE BOCANEGRA.

Hon. DANIEL WEBSTER, *Secretary of State of the United States of America.*

Mr. Webster to Mr. Thompson.

DEPARTMENT OF STATE, *Washington, July* 13, 1842.

SIR,—After writing to you on the 8th instant, I received, through the same channel as the former, Mr. De Bocanegra's second letter, and at the same time your dispatch of the 6th of June, and your private letter of the 21st. This last letter of Mr. De Bocanegra was written, as you will see, before it was possible for him to expect an answer to his first, which

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answer is now forwarded, and shows the groundless nature of the complaints of Mexico. The letter itself is highly exceptionable and offensive. It imputes violations of honor and good faith to the government of the United States, not only in the most unjust, but in the most indecorous manner. You have not spoken of it in terms too strong in your circular to the members of the diplomatic corps.

On the receipt of this, you will write a note to Mr. De Bocanegra, in which you will say that the Secretary of State of the United States, on the 9th of July, received his letter of the 31st of May. That the President of the United States considers the language and tone of that letter derogatory to the character of the United States, and highly offensive, as it imputes to their government a direct breach of faith; and that he directs that no other answer be given to it, than the declaration that the conduct of the government of the United States, in regard to the war between Mexico and Texas, having been always hitherto governed by a strict and impartial regard to its neutral obligations, will not be changed or altered in any respect or in any degree. If for this the government of Mexico shall see fit to change the relations at present existing between the two countries, the responsibility remains with herself.

I am, sir, your obedient servant,

DANIEL WEBSTER.

WADDY THOMPSON, Esq., *Envoy Extraordinary and Minister Plenipotentiary of the United States, Mexico.*

RESPECTING THE AMERICAN CITIZENS CAPTURED AT SANTA FE.

Mr. Webster to Mr. Ellis.

DEPARTMENT OF STATE, *Washington, January* 3, 1842.

SIR,—The friends of Mr. Franklin Coombs, son of General Leslie Coombs, of Kentucky, have applied for the interposition of this government in behalf of that young gentleman, who accompanied the late Texan expedition to Santa Fe, in Mexico, and is supposed to have been captured, and, if alive, to be held in bondage in that country, with the other survivors of the expedition. It has been represented to this department that young Coombs has never been a citizen of Texas; that he did not repair to that country with any intention of relinquishing his allegiance to this government, or of remaining in Texas; but that he went thither in the autumn of 1840, upon private business of his father, and for the benefit which he was assured his feeble health would derive from the milder winter climate of that region. He was, however, detained there by both causes

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until about the time when the expedition referred to set out. This he determined to accompany, merely for the object of confirming his health, and gratifying a curiosity, both liberal and natural, in regard to the unknown lands through which the course of the expedition lay.

As there is no reason to doubt the correctness of this information, you will, accordingly, forthwith make the necessary representations to the Mexican government upon the subject, with a view to avert from young Coombs, if he should be alive, the dangers to which he may be or may have been exposed. You will state that, from the respectability of his family, and for other reasons, there can be no ground for the belief that he would have accompanied the expedition for any other objects than those mentioned; and that if he had been aware that the views of the Texan government, in dispatching it, had been hostile or predatory, rather than friendly and commercial, as they were understood to have been at the time, he would not have gone in its company. If to this it be objected that the expedition was military in its array, and must, therefore, be presumed to have had warlike designs against the Mexican authorities, it may be answered that the avowed motive of the members of the expedition, in bearing arms, was to ward off the attacks of hostile Indians, and especially of the Camanches, who, it is well known, roam in great force along and across the track which was to have been pursued. This objection would apply with much less, if with any force to young Coombs, as he was no soldier, and had never been one; and, if found with arms, there could in his case be no better ground for the opinion that they were to have been used for purposes of attack, and not for those of defense, than if he had accompanied one of the caravans from Missouri to Santa Fe, by means of which, as is well known, an extensive trade is carried on between this country and Mexico, to the mutual advantage of the parties.

Although young Coombs is the only American citizen who accompanied the expedition for whom the interference of this government has been asked, it is understood that there was another who as little deserves to be subjected to any penal proceedings on the part of the Mexican government. This is Mr. George W. Kendall, of New Orleans.

You will press this case with the utmost earnestness on the Mexican government, as the government of the United States feels itself bound to interfere, and to signify its confident expectation that the lives of American citizens will not be sacrificed, who have not intentionally done any thing of a hostile character against Mexico. Even if the conduct of young Coombs was indiscreet and ill-judged, yet this government can

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not suppose that the government of Mexico would treat him as an armed combatant found among its enemies.

You will spare no pains to impress the Mexican authorities with the feelings which would be excited in this country if any harsh proceeding should be adopted toward this youth.

You will avail yourself of the opportunity of making to that government this communication, to suggest that, while this government is disposed to maintain with strict fidelity amicable relations with the Mexican Republic, and will not attempt to screen from merited punishment any of our citizens who may be guilty of an infraction of the laws intended to preserve those relations, yet that summary, sanguinary, or undue punishment of either Texans or citizens of the United States, in Mexico, inevitably tends to excite and foment in this country an acerbity of feeling against Mexico which will be much more apt to defeat the supposed objects of those punishments than if the offenders were to have a fair trial, and, if then convicted, were to be punished in some proportion to their offenses. You will, however, make this suggestion in a conciliatory tone, without allowing it to be supposed that this government has any intention to dictate the policy to be adopted by that of the Mexican Republic, upon this or any other subject; but, supposing their disposition toward the United States to be amicable, our wish is merely to point a way by which, it seems to us, that reciprocal disposition, as well as the integrity of the Mexican territory, may be more effectually maintained. Accustomed ourselves to regular judicial proceedings, fair and full trials, and mild punishments, the opposites of these, if exercised by other governments, always serve to check the growth of amity and good-will.

Any reasonable expenses which may be necessary to defray the charge of a special messenger from the Mexican capital to the place of captivity of young Coombs and his American associates, or for any other proper purposes necessary for their safety and liberation, will be borne by this government, and will be defrayed by you, and for them you will draw on this department, specifying in your drafts their purpose, and sending with them such vouchers as you may be able to procure.

The interest which we feel for Coombs, whose case has been particularly presented to us, and for Mr. Kendall also, will lead to the dispatching of this communication in the way most likely to carry it soon to your hands.

I am, sir, your obedient servant, DANIEL WEBSTER.

To POWHATAN ELLIS, Esq., *Envoy Extraordinary, &c., Mexico.*

P. S.—Since the above was written, application has been made in behalf of Mr. J. C. Howard, a youth of nineteen years of age, who was also with the expedition, and who, we are in-

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formed, was not a citizen of Texas. You will likewise inquire into his case, and do for him any thing else which you can do with propriety. D. W.

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Mr. Webster to Mr. Ellis.

DEPARTMENT OF STATE, *Washington, January* 6, 1842.

SIR,—I addressed you on the 3d instant in behalf of Franklin Coombs and Mr. Kendall, captured by the Mexican army, with the Texan expedition, near Santa Fe. The object of this is only to say (what, perhaps, you would not have failed to understand) that, if it should be found that other American citizens were made captives, under like circumstances, and with similar claims to immunity and release, you will exert the same interference in their behalf.

I am, with regard, your obedient servant,

DANIEL WEBSTER.

To POWHATAN ELLIS, Esq., *Envoy Extraordinary, &c., Mexico.*

Mr. Webster to Mr. Peyton.—[EXTRACTS.]

[PRIVATE.]

WASHINGTON, *January* 6, 1842.

DEAR SIR,—Your letter to the President, of the 21st of December, has been read by him with great interest and anxiety, although it was not the first communication upon the subject. Letters had been previously received from General Coombs, and information communicated from other quarters, upon which immediate steps were taken. A special messenger has been dispatched from this department, with an instruction to our minister at Mexico, of which I inclose a copy. The President will interfere for the life and safety of young Coombs to the full extent of his duty. You must be aware of the delicacy of the question, at least as it presents itself to us, without more knowledge of the facts.

The President wishes the most effectual means taken, consistent with justice and propriety, to secure his safety. * * * On receipt of this, if you should be of opinion that the object in view would be promoted by sending a private agent from New Orleans to co-operate with the American minister in Mexico, the President is willing that such agent, to be selected by you, should be immediately dispatched; and his necessary expenses will be defrayed by this department. He can not receive any public character, as we have a minister on the spot; but the President's great desire to do all that can be done leads him to say that if you think a private agency might be useful, he wishes it to be instituted, and that you would select such person as you deem the fittest for such duty. He the more readily submits this part of the case to your discretion, as, before this com-

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munication shall reach New Orleans, you may very probably be in possession of much more information than has as yet reached us; and there are likely also to be many citizens of New Orleans who are acquainted at Mexico.

As this agent will have no public character, he can only act under direction of the American minister, to whom he will report himself on his arrival. And the main advantage to be expected from such agency is this: that a person of respectability and address, well acquainted with Mexico, its manners and language, and perhaps with its present authorities, and acquainted, also, with the character, family, and connections of Coombs, Kendall, and other American citizens who may be in like condition, may, by unofficial means and personal efforts, co-operate usefully with Mr. Ellis. If you think it advisable, on the whole, that such agent be employed, you will give a copy of this letter as his instructions.

The collector of New Orleans will have instructions to convey Mr. M'Rae to the fittest port in Mexico, by the revenue cutter or other the most prompt mode; and if you should think it useful that such private agent as is above mentioned should proceed to Mexico, he may use the same conveyance. You will see by the inclosed that, although not applied to by his friends, Mr. Kendall's case has not been overlooked; and it is the President's wish, that if any other American citizen, innocently in company with the expedition, should have fallen into the hands of the Mexicans, an equal interference may be made in his behalf. I am, &c., DANIEL WEBSTER.

BALIE PEYTON, Esq., *United States District Attorney, New Orleans.*

Mr. Webster to Mr. Thompson.

DEPARTMENT OF STATE, *Washington, April* 15, 1842.

SIR,—I have to address you upon the subject of those citizens of the United States who were captured with the Texan expedition to Santa Fe, and who, as is believed, were not parties to that expedition, so far as it was military and hostile to Mexico, if, in fact, a hostile invasion of Mexico was among its purposes, but accompanied it only as traders, tourists, travelers, men of letters, or in other characters and capacities, showing them to be *non-combatants;* but who, nevertheless, were taken and held as prisoners, compelled to undergo incredible hardships in a winter's march of two thousand miles, and at its end subjected to almost every conceivable degree of indignity and suffering.

By the law and practice of civilized nations, enemies' subjects taken in arms may be made prisoners of war; but every person found in the train of an army is not to be considered as, therefore, a belligerent or an enemy. In all wars, and in all

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countries, multitudes of persons follow the march of armies, for the purpose of traffic or from motives of curiosity, or the influence of other causes, who neither expect to be nor reasonably can be considered belligerents. Whoever, in the Texan expedition to Santa Fe, was commissioned or enrolled for the military service of Texas, or, being armed, was in the pay of that government, and engaged in an expedition hostile to Mexico, may be considered as her enemy, and might lawfully, therefore, be detained as prisoner of war. This is not to be doubted; and, by the general practice of modern nations, it is true that the fact of having been found in arms with others admitted to be armed for belligerent purposes raises a presumption of hostile character. In many cases, and especially in regard to European wars in modern times, it might be difficult to repel the force of this presumption. It is still, however, but a presumption; because it is nevertheless true that a man may be found in arms with no hostile intentions. He may have assumed arms for other purposes, and may assert a pacific character, with which the fact of his being more or less armed would be entirely consistent. In former and less civilized ages, cases of this sort existed, without number, in European society. When the peace of communities was less firmly established by efficient laws, and when, therefore, men often traveled armed for their own defense, or when individuals, being armed according to the fashion of the age, yet often journeyed under the protection of military escorts or bodies of soldiers, the possession of arms was no evidence of hostile character, circumstances of the times sufficiently explaining such appearances, consistently with pacific intentions. And circumstances of the country may repel the presumption of hostility as well as circumstances of the times, or the manners of a particular age. The Texan expedition to Santa Fe, in traversing the vast plains between the place from which it set out and that point, was to pass through a region which no one thinks of entering and crossing without arms, for whatever purpose or with whatever intent he may undertake such enterprise. If he be a hunter, he is armed; if a trader, he is armed; and, usually, traders go in considerable bodies, that they may be the better able to defend themselves against the roaming savage tribes so constantly met with in those extensive plains. It is not uncommon, indeed, that, for their better defense, companies of traders retain the service of men at arms, who maintain military order and array along the line of their march. When such bodies are met with in countries usually traversed by them, no inference arises, from the circumstance of their being armed, of any intention, on their part, of using such arms for any purpose but that of defense. If tourists, or persons wearing any other

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similar but equally pacific character, set forth on such a journey, they are still armed; armed for subsistence as well as for defense. The fact, therefore, of being found in such a country with arms does not prove a belligerent or hostile character, since nobody, however peaceable, is found there without arms. If, therefore, individuals armed only according to the custom of the country, but having no hostile purposes of their own, and free from all military authority or employment, fall in with or follow the march of troops proceeding toward a point of attack, these individuals are not *combatants*, and not subject to be taken and treated as prisoners. These considerations may be applied to those citizens of the United States for whose release from imprisonment the interposition of this government has been requested. One of those citizens is George Wilkins Kendall. Mr. Kendall is a man of letters, a highly respectable citizen of New Orleans, and was the editor of a literary publication carried on at that place. He was fond of travel at those seasons of the year when most persons who are able leave the city; and having, in all previous tours, made himself acquainted with all parts of his own country, and learning, early in the spring of 1841, that a TRADING expedition would start from Texas to Santa Fe about the first of May, he resolved on joining it, as a pleasure excursion of a novel and interesting character. His departure and his intentions were publicly announced in the paper with which he was concerned at the time of his setting forth. His object was declared to be to take a personal glance over this broad expanse of country, and, thus spending the summer, to return either by Missouri or by the way of Lower Mexico, by the usual time when citizens return to New Orleans for the fall business. The expedition, though having a military equipment, was represented to him as entirely commercial in its character, its object being, as was asserted, to turn the rich Chihuahua trade into the Texan channel. Mr. Kendall was no soldier, no revolutionary adventurer, but a man of respectable connections, engaged in prosperous business, and fond of the enjoyments of intellectual and social life. It is hardly possible that such a gentleman should have left such a condition to form part of a military expedition, subjecting himself to all its hazards and all its results, in an attempt to subjugate by force of arms a Mexican province five hundred or a thousand miles from his home and his connections.

Before leaving New Orleans, he obtained a passport from the Mexican vice consul at that city. This fact, although it appears to have been denied, is proved by the testimony of Mr. Falconer and Mr. Van Ness. They can hardly be mistaken; but further evidence on this point may probably be in your possession before you receive this dispatch. He armed

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himself before leaving home, as any other person, of however pacific character, would arm himself for such a tour. Such was Mr. Kendall's character, such his objects, and such the circumstances under which he joined the ill-fated expedition.

Several other prisoners appear, from the circumstances, to have been as little engaged in any hostile design as Mr. Kendall. John Tompkins is represented to be a citizen of the United States, from Greene county, Illinois, where his family, consisting of a wife and five children, still reside. He is a saddler by trade, but left the United States with merchandise for Texas just in time to join the expedition to Santa Fe. His health was delicate, and his object was to improve it, to dispose of his merchandise for defraying his expenses, and to return to the place of his abode by the way of St. Louis.

David Snively is a man somewhat advanced in life, who belongs to the State of Ohio, where he has a wife and several children. He went with the expedition as a trader, and had a considerable amount of merchandise with him.

H. R. Buchanan, of Tennessee, went also as a trader, and took with him property of value, which was taken from him. He had arrived in Texas only a month before the expedition set out, and accompanied it, with his own pack mules and a servant.

L. B. Sheldon is a member of the Mississippi bar, who accompanied the expedition as a traveler only. He had with him a small amount in merchandise, from the sale of which he expected to defray his traveling expenses. He had gone to Texas in March, 1841, on business which he presumed would not detain him longer than two months; but he subsequently resolved to join the expedition for the purpose above mentioned.

Two persons by the name of Howard were among the captives, natives of and residents in this city or its neighborhood. They are represented as traders, who had with them merchandise to the amount of eight or ten thousand dollars.

Thomas S. Terry, of Hartford, in Connecticut, is believed to have gone to Texas in December, 1840, and, being a trader, joined the expedition as an escort, for protection against the Indians or other freebooters. He did not intend to return to Texas, but to trade at Santa Fe, and between that place and St. Louis. The circumstances of others who have applied for the interposition of this government are less precisely known. Whatever evidence may be in this department, or shall be received hereafter, respecting them, will be forwarded to you.

A demand for Mr. Kendall's release from confinement, as well as that of others under equally innocent circumstances, has been made by the minister of the United States at Mexico, and you will see the correspondence between that minister and the Mexican Secretary of State. That correspondence, as

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you will observe, is principally confined to the case of Mr. Kendall.

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The Mexican Secretary objects to his release from confinement, because he was united with the invading enemies of that country, in whose company he was taken, and under whose protection he was journeying; and because the entrance of foreigners into Mexico by the Texan frontier, being prohibited by a Mexican law, even when such foreigners might be traveling alone, the prohibition ought to be more strict and severe in the case of their entering by the side of soldiers coming to invade the country. Because, also, Mr. Kendall was an agent of the Texans, or, at least, a member of the expedition to New Mexico; in proof of which, a passage, in the following words, is quoted from the New Orleans Picayune of the 21st of December last: "A Captain Lewis was one of the commissioners, and the other was Mr. Kendall, editor of the Picayune."

The Secretary proceeds to assert that those who join invaders ought to be involved in their fate in respect to such warlike measures as it may be necessary to take to repel such invaders; and that, in affairs of this nature, all the presumptions are against him who associates himself with an enemy, in whose company he is made a prisoner, whatever his intentions may have been. The Secretary states, further, that if Mr. Kendall was ignorant of the Mexican law referred to, it is well known not to be allowable to plead ignorance of any law which had properly been made public. But, supposing that he was ignorant of the law, the circumstances of his case, he argues, were such that its text could not be literally followed; for the penalty mentioned was intended to apply to one or two persons only, and those without hostile accompaniments, who might present themselves on the frontier; and that the law did not deprive the Mexican government of the right of self-preservation, a right derived from the law of nature and nations. The Secretary then alludes to documents in the possession of his government, which, he says, place Mr. Kendall's conduct in a more serious light; but those documents are neither produced nor described. The Secretary denies that the paragraph quoted from the newspaper was the ground of the proceeding of his government; but says that, proceeding as the paragraph did from Mr. Kendall's partners in business, it might be considered as impartial, and served to strengthen the presumptions against him. He denies that it is the duty of his government to allow Mr. Kendall the benefit of the context of the article from which the paragraph supposed to inculpate him had been quoted, although the extract may be used against him. He endeavors to prove himself correct in calling Mr. Kendall a commissioner of the Texans, and proceeds to define what he understands a com-

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missioner to be. If Mr. Kendall had a passport, that, he admits, would be *prima facie* evidence in his favor; and that, if it should be ascertained that he had an unconditional passport, which had been destroyed by an officer of the Mexican army, he should be set at liberty, and that measures had been taken to ascertain these facts.

These reasons appear to be either unfounded in fact, or, if true, to furnish no sufficient ground for regarding Mr. Kendall as a belligerent enemy, or for declining to comply with the demand made by this government in his behalf. In the first place, it is said he was united with the invading enemies of the country, in whose company he was taken, and under whose protection he was journeying.

That he traveled with the Texans, is true; but, as has been already said, that fact alone does not constitute him a combatant. It may furnish, in the first instance, a presumption that he was so; but such a presumption may be repelled, and is fully repelled, by the circumstances of the case. There would be no meaning in that well-settled principle of the law of nations which exempts men of letters and other classes of non-combatants from the liability of being made prisoners of war, if it were an answer to every claim for such exemption to say that the person making it was united with a military force, or journeying under its protection. As to the assertion that it is against the law of Mexico for foreigners to pass into it, across the line of Texas, it is with no little surprise that the Mexican Secretary of State is found to assign this reason for making Mr. Kendall a prisoner. The direction of that law only is to prohibit the traveler's entrance, or to send him back if he does enter. It has no penalty of chains, dungeons, or condemnation to the public works. And the Mexican Secretary himself sufficiently shows that this law has no application to the case, because, he says, it was intended only for the case of one, two, or a few individuals. Having quoted this law, and then finding that, in its just import, it furnished no authority for the treatment which these citizens of the United States had received, the Mexican Secretary appears to treat the subject as if this law had been set up to assist their claim for liberation; while, in truth, all that Mr. Ellis did, in this respect, was to say, that if that law governed the case, then no penalty, no punishment, and no treatment of the prisoners could be justified but such as had been prescribed by that law; and thereupon the Secretary adroitly denied that the law applies to the case at all. In this he is no doubt quite right.

As to the assertion that Mr. Kendall was an agent of the Texans, or a member, properly speaking, of the expedition, and the reference, *in proof* of this assertion, to the article in

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the newspaper with which he was connected, all this was founded in misconstruction, as you will see, of the true import of the article itself, even if a newspaper paragraph were fit to be regarded in such a case. In the article, Mr. Kendall had been called an "avant-courier," merely to signify that he went forward, in approaching Santa Fe, in advance of the rest of the party. If others went forward for other purposes, he might still, in pursuance of his own objects, go with them. But Mr. Kendall, not being responsible for this article, or shown to have had any knowledge of it, it can not be of the least force against him, whatever may be its import.

The Secretary says, finally, that being found in company with an enemy raises a presumption against the party; but the Secretary does not say that this presumption may not be rebutted. Why, indeed, does he call it a presumption, unless he means that it is a thing calling for explanation, and which may be explained? It is explained, fully and completely. Mr. Kendall, as we think, brings himself clearly within the exemption of the law of nations, as practiced in modern times; and to insist on presumptions, and to give them the force of conclusive proofs, in defiance of all repelling proofs, is to render that law, in its application to cases of this kind, null and void. If it be admitted that, *prima facie*, the presumption is against Mr. Kendall, has he not repelled it? He has made an effort to do so; but, instead of meeting this effort by argument, and the proofs which support it by opposite proofs, the Secretary appears to content himself with stating that such is the legal presumption; thus wholly avoiding the true point of the case. This government thinks that the facts stated and proved show Mr. Kendall to have been no party to the military expedition of Texas; to have had no hostile intention against Mexico; to have entered her territory for no purpose of assisting to make war on her citizens, dismember her provinces, or overturn her government.

It does not very satisfactorily appear, from any correspondence or information now in this department, in what light Mexico looks upon those persons made prisoners at Santa Fe, whom she has a right to consider as engaged in the service of Texas, and therefore as her enemies. We must presume that she means to regard them as prisoners of war. There is a possibility, however, that a different mode of considering them may be adopted, and that they may be thought to be amenable to the municipal laws of Mexico. Any proceeding founded on this idea would undoubtedly be attended with the most serious consequences. It is now several years since the independence of Texas, as a separate government, has been acknowledged by the United States, and she has since been recognized in that

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character by several of the most considerable powers of Europe. The war between her and Mexico, which has continued so long, and with such success that for a long time there has been no hostile foot in Texas, is a public war, and as such it has been and will be regarded by this government. It is not now an outbreak of rebellion, a fresh insurrection, the parties to which may be treated as rebels. The contest, supposed, indeed, to have been substantially ended, has at least advanced far beyond that point. It is a public war, and persons captured in the course of it, who are to be detained at all, are to be detained as prisoners of war, and not otherwise.

It is true that the independence of Texas has not been recognized by Mexico. It is equally true that the independence of Mexico has only been recently recognized by Spain; but the United States having acknowledged both the independence of Mexico before Spain acknowledged it, and the independence of Texas, although Mexico has not yet acknowledged it, stands in the same relation toward both those governments, and is as much bound to protect its citizens in a proper intercourse with Texas, against injuries by the government of Mexico, as it would have been to protect such citizens in a like intercourse with Mexico against injuries by Spain. The period which has elapsed since Texas threw off the authority of Mexico is nearly as long as the whole duration of the Revolutionary war of the United States. No effort for the subjugation of Texas has been made by Mexico, from the time of the battle of San Jacinto, on the 21st day of April, 1836, until the commencement of the present year, and during all this period Texas has maintained an independent government, carried on commerce, and made treaties with nations in both hemispheres, and kept aloof all attempts at invading her territory. If, under these circumstances, any citizen of the United States, in whose behalf this government has a right on any account or to any extent to interfere, should, on a charge of having been found with an armed Texan force acting in hostility to Mexico, be brought to trial and punished as for a violation of the municipal laws of Mexico, or as being her subject, engaged in rebellion, after his release has been demanded by this government, consequences of the most serious character would certainly ensue. You will, therefore, not fail, should any indication render it necessary, to point out distinctly to the government of Mexico the dangers, should the war between her and Texas continue, of considering it, so far as citizens of the United States may be concerned, in any other light than that of a public national war, in the events and progress of which prisoners may be made on both sides, and to whose condition the law and usages of nations respecting prisoners of war are justly applicable.

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And this makes it proper that I should draw your particular attention to the manner in which the persons taken near Santa Fe have been treated, as we are informed.

Mr. Kendall, and other persons with him, having been carried to Santa Fe from the place of capture, were there deprived of their arms. To this there can be no objection, if we consider them as prisoners of war, because prisoners of war may be lawfully disarmed by the captor; but they were also despoiled, not only of every article of value about their persons, but of their clothing also—their coats, their hats, their shoes—things indispensable to the long march before them. If these facts be not disproved, they constitute an outrage by the local authorities of Mexico for which there can be no apology. The privations and indignities to which they were subjected, during their march of two thousand miles to the city of Mexico, at the most inclement season of the year, were horrible, and, if they were not well authenticated, it would have been incredible that they should have been inflicted in this age, and in a country calling itself Christian and civilized. During many days they had no food, and on others only two ears of corn were distributed to each man. To sustain life, therefore, they were compelled to sell, on the way, the few remnants of clothing which their captors had left them; but, by seeking thus to appease their hunger, they increased the misery which they already endured from exposure to the cold. Most dreadful of all, however, several of them, disabled by sickness and suffering from keeping up with the others, were deliberately shot without any provocation. Those who survived to their journey's end were, many of them, afflicted with loathsome disease; and those whose health was not broken down have been treated, not as the public law requires, but in a manner harsh and vindictive, and with a degree of severity equal, at least, to that usually inflicted by the municipal codes of most civilized and Christian states upon the basest felons. Indeed, they appear to have been ranked with these; being thrust into the same dungeons with Mexican malefactors, chained to them in pairs, and when allowed to see the light and breathe the air of heaven, required, as a compensation therefor, to labor, beneath the lash of a task-master, upon roads and public works of that country.

The government of the United States has no inclination to interfere in the war between Mexico and Texas, for the benefit or protection of individuals, any further than its clear duties require. But if citizens of the United States who have not renounced, nor intended to renounce, their allegiance to their own government, nor have entered into the military service of any other government, have nevertheless been found so con-

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nected with armed enemies of Mexico as that they may be lawfully captured and detained as prisoners of war, it is still the duty of this government to take so far a concern in their welfare as to see that, as prisoners of war, they are treated according to the usage of modern times and civilized states.

Indeed, although the rights or the safety of none of their own citizens were concerned, yet if, in a war waged between two neighboring states, the killing, enslaving, or cruelly treating of prisoners should be indulged, the United States would feel it to be their duty, as well as their right, to remonstrate and to interfere against such a departure from the principles of humanity and civilization. These principles are common principles, essential alike to the welfare of all nations, and in the preservation of which all nations have, therefore, rights and interests. But their duty to interfere becomes imperative in cases affecting their own citizens.

It is, therefore, that the government of the United States protests against the hardships and cruelties to which the Santa Fe prisoners have been subjected. It protests against this treatment in the name of humanity and the law of nations; in the name of all Christian states; in the name of civilization and the spirit of the age; in the name of all republics; in the name of Liberty herself, enfeebled and dishonored by all cruelty and all excess; in the name of and for the honor of this whole hemisphere. It protests emphatically and earnestly against practices belonging only to barbarous people in barbarous times.

By the well-established rules of national law, prisoners of war are not to be treated harshly, unless personally guilty toward him who has them in his power; for he should remember that they are men, and unfortunate.

When an enemy is conquered, and submits, a great soul forgets all resentment, and is entirely filled with compassion for him. This is the humane language of the law of nations; and this is the sentiment of high honor among men. The law of war forbids the wounding, killing, impressment into the troops of the country, or the enslaving or otherwise maltreating of *prisoners of war*, unless they have been guilty of some grave crime; and from the obligation of this law no civilized state can discharge itself.

Every nation, on being received, at her own request, into the circle of civilized governments, must understand that she not only attains rights of sovereignty and the dignity of national character, but that she binds herself also to the strict and faithful observance of all those principles, laws, and usages which have obtained currency among civilized states, and which have for their object the mitigation of the miseries of war.

No community can be allowed to enjoy the benefit of na-

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tional character, in modern times, without submitting to all the duties which that character imposes. A Christian people, who exercise sovereign power, who make treaties, maintain diplomatic relations with other states, and who should yet refuse to conduct its military operations according to the usages universally observed by such states, would present a character singularly inconsistent and anomalous.

This government will not hastily suppose that the Mexican republic will assume such a character.

There is yet another very important element arising out of the facts of this case.

It is asserted and believed that the surrender of some of the persons connected with the expedition was made upon specific terms, which were immediately violated by the local Mexican authorities. If there is one rule of the law of war more clear and peremptory than another, it is that compacts between enemies, such as truces and capitulations, shall be faithfully adhered to; and their non-observance is denounced as being manifestly at variance with the true interest and duty, not only of the immediate parties, but of all mankind. Consequently, if the surrender of the expedition, or any part of it, was conditional, the benefit of those conditions must be insisted upon in favor of Mr. Kendall. According to the statement of Messrs. Falconer and Van Ness, Mr. Kendall proceeded two hundred miles in advance of the main body, and was taken with his companions while they were displaying a flag of truce; and the persons who took them gave assurances that they should not be held as prisoners of war.

Here, then, was a special immunity promised, but afterward notoriously withheld, as we are bound to believe in the present state of our information upon the subject. If, therefore, this government were not entitled to demand Mr. Kendall's release on the grounds of his having been a non-combatant and a neutral, it might require the government of Mexico to take care that the stipulation of its authorized agents to that effect be scrupulously fulfilled, and that, on this account, those to whom the promise was made should be immediately released, according to that promise.

In conclusion, I am directed by the President of the United States now to instruct you that, on the receipt of this dispatch, you inquire carefully and minutely into the circumstances of all those persons who, having been taken near Santa Fe, and having claimed the interposition of this government, are still held as prisoners in Mexico, and you will demand of the Mexican government the release of such of them as appear to have been innocent traders, travelers, invalids, men of letters, or for any other reasons justly esteemed non-combatants, being citi-

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zens of the United States. To this end it may be proper to direct the consul to proceed to the places where any of them may be confined, and to take their statements under oath, as also the statements of other persons to whom they may respectively refer. If the Mexican government deny facts upon which any of the parties claim their release, and desire time for further investigation of their respective cases, or any of them, proper and suitable time must be allowed; but if any of the persons described in the next preceding paragraph, and for whose release you shall have made a demand, shall still be detained, for the purpose of further inquiry or otherwise, you will then explicitly demand of the Mexican government that they be treated henceforward with all the lenity which, in the most favorable cases, belongs to the rights of prisoners of war; that they be not confined in loathsome dungeons, with malefactors and persons diseased; that they be not chained, or subjected to ignominy, or to any particular rigor in their detention; that they be not obliged to labor on the public works, or put to any other hardship. You will state to the Mexican government that the government of the United States entertains a conviction that these persons ought to be set at liberty without delay; that it will feel great dissatisfaction if it shall still learn that Mr. Kendall, whose case has already been made the subject of an express demand, and others of equal claims to liberation, be not set at liberty at the time when you receive this dispatch; but that, if the government of Mexico insists upon detaining any of them for further inquiry, it is due to the government of the United States, to its desire to preserve peace and harmony with Mexico, and to justice and humanity, that, while detained, these persons should enjoy, to the fullest extent, the rights of prisoners of war; and that it expects that a demand so just and reasonable, a demand respectfully made by one friendly state to another, will meet with immediate compliance. Having made this demand, you will wait for an answer; and if within ten days you shall not receive assurances that all of the persons above mentioned, who may still be detained, will be thenceforward treated in the manner which has now been insisted upon, you will hold no further official intercourse with the government of Mexico until you shall receive further directions from your own government. You will thereupon communicate with this department, detaining for that purpose the messenger who carries this. In your communication you will state, as fully and as accurately as possible, the circumstances of each man's case, as they may appear by all the evidence which at that time may be possessed by the legation. In making your demand for the better treatment of the prisoners, you will take especial care not to abandon or weaken

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the claim for their release, nothing more being intended in that respect than that proper time should be allowed to the government of Mexico to make such further inquiries as may be necessary.

Your predecessor has already been directed that, if any of the persons suffer for the want of the common necessaries of life, he should provide for such wants until otherwise supplied: a direction which you will also observe.

I am, sir, your obedient servant, DANIEL WEBSTER.

WADDY THOMPSON, Esq., *Envoy Extraordinary and Minister Plenipotentiary of the United States to the Mexican Republic.*

CAPTAIN JONES'S ATTACK ON MONTEREY.

Message from the President of the United States, in reply to the Resolution of the House of Representatives of the 2d of February, calling for Information in Relation to the taking Possession of Monterey by Commodore Thomas Ap Catesby Jones, February 22, 1843.

To the House of Representatives of the United States:

A resolution has been communicated to me, which was adopted by the House of Representatives on the 2d instant, in the following terms:

"*Resolved*, That the President of the United States be requested to inform this House by what authority and under whose instructions Captain Thomas Ap Catesby Jones, commander of the squadron of the United States in the Pacific Ocean, did, on or about the 19th of October last, invade in warlike array the territories of the Mexican Republic, take possession of the town of Monterey, and declare himself the commander of the naval and military expedition for the occupation of the Californias.

"*Resolved*, That the President of the United States be requested to communicate to this House copies of all the instructions given by him, or under his authority, to the said Captain Jones, from the time of his appointment to the command of the said squadron; also, copies of all communications received from him relating to his expedition for the occupation of the Californias; and also to inform this House whether orders have been dispatched to the said Captain Jones recalling him from his command."

The proceeding of Captain Jones, in taking possession of the town of Monterey, in the possessions of Mexico, was entirely of his own authority, and not in consequence of any orders or instructions of any kind given to him by the government of the United States. For that proceeding he has been recalled, and

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the letter recalling him will be found among the papers herewith communicated.

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The resolution of the House of Representatives asks for "copies of all the instructions given to Captain Jones, from the time of his appointment to the command of the said squadron; also, copies of all communications received from him relating to his expedition for the occupation of the Californias," without confining the request to such instructions and correspondence as relate to the transactions at Monterey, and without the usual reservation of such portions of the instructions or correspondence as, in the President's judgment, could not be made public without prejudice or danger to the public interests.

It may well be supposed that cases may arise, even in time of peace, in which it would be highly injurious to the country to make public, at a particular moment, the instructions under which a commander may be acting on a distant and foreign service. In such a case, should it arise, and in all similar cases, the discretion of the executive can not be controlled by the request of either House of Congress for the communication of papers. The duties which the Constitution and the laws devolve on the President must be performed by him under his official responsibility; and he is not at liberty to disregard high interests or thwart important public objects by untimely publications, made against his own judgment, by whomsoever such publications may be requested. In the present case, not seeing that any injury is likely to arise from so doing, I have directed copies of all the papers asked for to be communicated. And I avail myself of the opportunity of transmitting, also, copies of sundry letters, as noted below. JOHN TYLER.

WASHINGTON, *February* 18, 1843.

Mr. Webster to Mr. Thompson.

DEPARTMENT OF STATE, *Washington, January* 17, 1843.

SIR,—Your dispatches to No. —, inclusive, and your private letter of the 15th ultimo, have been received.

Although the department is without official intelligence of the seizure of Monterey by Commodore Jones, in command of the United States squadron in the Pacific, it is deemed proper that no time should be lost in acquainting the Mexican government that the transaction was entirely unauthorized. If, therefore, the account of that event should prove to be authentic, you will take occasion to inform the Minister for Foreign Affairs orally that Commodore Jones had no warrant from this government for the proceeding, and that the President exceedingly regrets its occurrence.

I am, sir, your obedient servant, DANIEL WEBSTER.

WADDY THOMPSON, Esq., *Envoy Extraordinary and Minister Plenipotentiary of the United States, Mexico.*

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Mr. Webster to General Almonte.

DEPARTMENT OF STATE, *Washington, January* 21, 1843.

The undersigned, Secretary of State of the United States, has the honor to communicate to General Almonte, envoy extraordinary and minister plenipotentiary of the Mexican Republic, a copy of an instruction which has been addressed by this department to the minister of the United States at Mexico, upon the subject of the reported seizure of Monterey, on the Mexican coast, by Commodore Jones, in command of the United States squadron in the Pacific.

The undersigned avails himself of the occasion to offer General Almonte renewed assurances of his very distinguished consideration. DANIEL WEBSTER.

General Don J. N. ALMONTE, &c.

General Almonte to Mr. Webster.—[TRANSLATION.]

MEXICAN LEGATION, *Washington, January* 24, 1843.

The undersigned, envoy extraordinary and minister plenipotentiary of the Mexican Republic near the government of the United States of America, has the honor to acknowledge the receipt of the note which the Hon. Daniel Webster, Secretary of State, was pleased to address to him on the 21st instant, inclosing a copy of the instructions addressed by him, on the 17th instant, to Mr. Waddy Thompson, the American minister at Mexico, respecting the capture of Monterey, in Upper California, by Commodore Jones.

The undersigned expected no less from the sense of justice of the Hon. Mr. Webster's government; he, however, regrets to observe that, in the instructions given to the aforesaid Mr. Waddy Thompson, minister of the United States at Mexico, while it is denied that the proceedings of Commodore Jones were authorized, the declaration is omitted that he will be exemplarily punished for the extraordinary act of excess [*inaudito atentado*] committed by him, in violating the faith of treaties, and abusing the hospitality with which the peaceful inhabitants of Monterey were preparing to receive him. The undersigned will, nevertheless, without loss of time, communicate to his government the note from the Hon. Mr. Webster, and the accompanying copy of the instructions; but he will, in the mean time, inform the Secretary of State that he has just received communications and instructions from his Excellency the Minister of Foreign Relations of Mexico, wherein he is directed to press for the immediate satisfaction and indemnification which his government expects to receive from this republic.

The Hon. Mr. Webster will have already been informed of the tenor of the communication addressed to Mr. Waddy Thomp-

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son, on the 19th of December last, by the Mexican government; and the undersigned doubts not, from the good faith of the government of the United States, that, in reparation of the scandalous infraction of the treaty of friendship, commerce, and navigation existing between the two republics, committed by one of its officers who has invoked its name, the said officer will be exemplarily punished, as a warning to other chiefs, who, incited by his example, might be disposed to commit excesses of equal enormity, if they could be pardoned by their own government. The delinquency of Commodore Jones is so serious, so obvious, and so notorious, that it would be superfluous to particularize its enormities.

The undersigned trusts that the government of the United States will repair the losses and injuries inflicted by the said Commodore Jones, as well on the inhabitants of Monterey as on the Mexican Republic. This is an act of rigorous justice, which Mexico has a right to expect, and which it is confident of obtaining if, as she believes, and as the Hon. Mr. Webster assures, her government is a government of law.

The undersigned, being desirous for the removal of every obstacle to the intimacy of the relations of friendship and good understanding which should subsist between two friendly nations, bound by solemn treaties, and anticipating a happy result to their communications with each other (as he has no grounds for believing the contrary), requests the Hon. Mr. Webster, Secretary of State, to have the kindness to submit the contents of this note to his Excellency the President, and to communicate to him the resolution of his excellency as soon as possible, in order that he may avail himself of the departure of a messenger, whom the undersigned proposes to dispatch to Mexico, and who will quit this city on the 27th instant.

The undersigned embraces the opportunity here afforded to repeat to the Hon. Daniel Webster, Secretary of State, the assurances of his distinguished consideration.

J. N. ALMONTE.

HON. DANIEL WEBSTER, *Secretary of State.*

Mr. Webster to General Almonte.

DEPARTMENT OF STATE, *Washington, January* 30, 1843.

The undersigned, Secretary of State of the United States, has had the honor to receive the note of the 24th instant of General Almonte, envoy extraordinary and minister plenipotentiary of the Mexican Republic.

General Almonte has already been made acquainted with the instruction addressed from this department, on the 17th instant, to the minister of the United States at Mexico, respecting the transaction at Monterey, in Upper California, in which

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Commodore Jones was concerned; but General Almonte now expresses his regret that he sees in that instruction no declaration that Commodore Jones will be exemplarily punished for the extraordinary act of excess committed by him, in violation of the faith of treaties, and in abuse of the hospitality with which the peaceable inhabitants of Monterey were prepared to receive him.

The undersigned has the honor to inform General Almonte, that, before the receipt of his note, the President had given directions for the adoption of such a course of proceeding toward Commodore Jones as, in his opinion, was due to the circumstances of the case, to the preservation of the principle and practice of absolute and entire abstinence, on the part of military power, from all aggression in time of peace, and especially due to the friendly relations at the present time happily subsisting between the United States and Mexico.

But General Almonte and his government must see that Commodore Jones intended no indignity to the government of Mexico, nor any thing unlawful toward her citizens. Unfortunately, he supposed, as he asserts, that a state of war actually existed, at the time, between the two countries. If this supposition had been well founded, all that he did would have been justifiable; so that, whatever of imprudence or impropriety he may be chargeable with, there is nothing to show that he intended any affront to the honor of the Mexican government, or to violate the relations of peace.

General Almonte is aware of some of the circumstances in which this belief of the actual existence of a state of hostilities probably might have had its origin. It is not deemed necessary now to advert to those circumstances, nor is it at present known to the government of the United States what other causes may have existed to strengthen this belief, or to make it general along the western shore of this Continent. In the clearly manifest absence of all illegal and improper intent, some allowance may be properly extended toward acts of indiscretion in a quarter so very remote, and in which correct information of distant events is not soon or easily obtained.

If, in this transaction, citizens of Mexico have received any injury in their persons or property, the government of the United States will undoubtedly feel itself bound to make ample reparation; and the representations of General Almonte on that subject will receive the most respectful and immediate consideration.

Happily, no lives were lost; nor is it understood that any considerable injury was suffered by any one.

The undersigned is directed by the President to assure General Almonte and his government that the government of the

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United States will at all times be among the last to authorize or justify any aggression on the territory of a nation with whom it is at peace, or any indignity to its government. Sensibly alive to any indignity, if offered to itself, it is equally resolved to give no such cause of offense to its neighbors. And the undersigned is directed to assure General Almonte and his government of the pain and the surprise which the President experienced on receiving information of this transaction. Under these assurances, the President hopes that it may pass away without leaving in the mind of the government of Mexico any other feeling than that in which the government of the United States entirely partakes: a feeling of deep regret at what has happened, and a conviction that no such unfortunate and unauthorized occurrence ought in any degree to impair the amicable relations subsisting between the two countries, so evidently to the advantage of both.

The undersigned has been made acquainted with the communication addressed by the Mexican Secretary of State to the minister of the United States at Mexico, and with the answer of the latter gentleman to that communication.

The undersigned avails himself of this occasion to offer General Almonte renewed assurances of his most distinguished consideration.

DANIEL WEBSTER.

General Don J. N. ALMONTE, &c.

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RELATIONS WITH SPAIN.

SCHOONER "AMISTAD."

Message from the President of the United States, transmitting sundry Letters between the Department of State and the Chevalier d'Argaïz, on the Subject of the Schooner "Amistad," February 27th, 1842.

To the House of Representatives:

I TRANSMIT to Congress sundry letters which have passed between the Department of State and the Chevalier d'Argaïz, envoy extraordinary and minister plenipotentiary of Spain near the government of the United States, on the subject of the schooner "Amistad," since the last communication of papers connected with that case. This correspondence will show the general grounds on which the Spanish minister expresses dissatisfaction with the decision of the Supreme Court in that case, and the answers which have been made to his complaints by the Department of State.

In laying these papers before Congress, I think it proper to observe that the allowance of salvage on the cargo does not appear to have been a subject of discussion in the Supreme Court. Salvage had been denied in the court below, and from that part of the decree no appeal had been claimed.

The 9th article of the treaty between the United States and Spain provides that "all ships and merchandise, of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas, shall be brought into some port of either state, and shall be delivered to the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof." The case of the "Amistad," as was decided by the court, was not a case of piracy, and therefore not within the terms of the treaty. Yet it was a case in which the authority of the master, officers, and crew of the vessel had been divested by force, and in that condition the vessel, having been found on the coast, was brought into a port of the United States; and it may deserve consideration that the salvors in this case were the officers and seamen of a public ship.

It is left to Congress to consider, under these circumstances, whether, although, in strictness, salvage may have been lawfully due, it might not yet be wise to make provision to refund it, as a proof of the entire good faith of the government, and of its

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disposition to fulfill all its treaty stipulations, to their full extent, under a fair and liberal construction. JOHN TYLER.

WASHINGTON, *February* 27, 1843.

The Chevalier d'Argaïz to Mr. Webster.—[TRANSLATION.]

WASHINGTON, *April* 5, 1841.

The Chevalier d'Argaïz had the honor to receive, with the Secretary of State's note of the 3d instant, copies of two letters received at his department relative to the slave Antonio. They contain some inaccuracies, which will not, however, be indicated, as they are of no importance.

The late Secretary of State, on learning the decision of the District Court of Connecticut, informed the Chevalier d'Argaïz that the slave Antonio was at his disposal, and the Chevalier d'Argaïz, in consequence, determined to bring him to his own house, until there should be a proper opportunity to send him to Havana; and, when about to carry this determination into effect, Mr. Forsyth informed him that the district attorney of Connecticut had declared that it would be necessary for the slave Antonio to remain in that state until the cause should be brought by appeal before the Circuit Court, on account of the great value of his evidence. To this the Chevalier d'Argaïz assented, and since that time he has heard nothing of the said negro.

Circumstances have, however, been entirely altered, by the decision of the Supreme Court; and, according to the information received by the Chevalier d'Argaïz, it is very probable that the negro will not reach Havana, if he should take upon himself the charge of sending him there. For which reason, he conceives that the government of the United States will be better able to insure his arrival at that island, where the consul of the Union may deliver him to his master.

The Chevalier d'Argaïz avails himself of this occasion to repeat to the Secretary of State the assurances of his high consideration.

HON. DANIEL WEBSTER, *Secretary of State.*

The Chevalier d'Argaïz to Mr. Webster.—[TRANSLATION.]

WASHINGTON, *April* 11, 1841.

SIR,—Her majesty's vice-consul at Boston writes to me, under date of the 7th instant, as follows:

"I have just received from the marshal of Connecticut a letter, of which this is a literal translation. Since my last letter to you, respecting the case of the negro Antonio, my conjectures have been realized, though in a different manner. At that time I supposed and feared that the self-styled friends of the Africans would solicit a writ of *habeas corpus* for his liberation; but they adopted another method. The jailer allowed

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the boy to go about the house and assist in the labors of the kitchen and in waiting at table. The said friends availed themselves of every opportunity to preach to him about liberty, and at length induced him to go away; they placed him on board the steam-boat on Monday morning last, and he went to New York. I followed him to that city, where Lewis Tappan, the leader of the abolitionists, informed me that Antonio was in town, but that he would not be delivered to me, and that arrangements had been made for sending him elsewhere. I could not meet him myself. I regret this occurrence very much, and fear that he is beyond our reach. If, however, I should succeed in finding him any where, you shall receive immediate notice."

By the letters from Mr. Baldwin, of the 21st of March last, and from Mr. Andrew Judson, of the 26th of the same, which you were pleased to send me with your note of April 3d, it appeared that the negro Antonio persisted in desiring to return to Havana; from which it may be inferred that, in order to make him change that determination, seduction or deception must have been employed, perhaps by persons whom his declarations might have affected (*compromeler*); and I do not understand why the marshal of Connecticut, whom Lewis Tappan informed that the said negro was in the city, did not take any measures to engage the authorities of that place, either with the view to recover him or to have him placed on board a vessel for Havana.

In virtue of what is here stated, I have considered it my duty to make this communication to you, sir, having no doubt that you would take the necessary measures to have the slave Antonio restored to his owner.

I repeat to you, sir, the assurances of my distinguished consideration. P. A. D'ARGAIZ.

Hon. DANIEL WEBSTER, *Secretary of State.*

Mr. Fletcher Webster to the Chevalier d'Argaiz.

DEPARTMENT OF STATE, *Washington, May* 3, 1841.

SIR,—In the absence of the Secretary of State, I have the honor of replying to your note of the 11th of April last, relating to the negro Antonio. I have laid it before the President, and am directed by him to say, that he regrets very much the occurrence of any event that seems at all likely to defer or delay the final and satisfactory settlement of the affair of the "Amistad."

Inquiry will be immediately directed to be made by the proper officers in order to discover the slave Antonio; and I shall have much pleasure in communicating to you the earliest information received at the department of the success of such investigation.

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I avail myself of this occasion to offer you the assurances of my very high consideration.

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FLETCHER WEBSTER, *Acting Secretary of State.*

The Chevalier D'ARGAÏZ, &c.

The Chevalier d'Argaïz to Mr. Webster.—[TRANSLATION.]

WASHINGTON, *May* 29, 1841.

The undersigned, envoy extraordinary and minister plenipotentiary of her Catholic majesty, has the honor, in compliance with what was agreed on with the Secretary of State in their last conference, to make known to him the conviction of the undersigned that the 6th article, as also the 8th, 9th, and 10th, of the treaty of 1795, have not been properly carried into execution (or effect), in the affair of the schooner "Amistad," as he conceives that he has proved in his correspondence. The subjects of her Catholic majesty have not received the assistance expressed in those articles, nor have their properties been respected, as is stipulated in the said articles; and this must have been understood by the attorney-general, Mr. Grundy, as appears by the opinion which he gave in November, 1839.

The government of the Union gave to this affair a course, forced, illegal, and contrary to the intention of the contracting parties.

The undersigned protested against it in due time, making the government of the United States responsible for consequences. Aware, however, of the embarrassed situation of the actual administration, and that a change of circumstances has rendered it impossible now to effect the fulfillment of that treaty, the undersigned believes he ought to demand, as he now does,

1. Indemnification for the vessel called the "Amistad."

2. Indemnification for her cargo, including the negroes found on board.

3. Indemnification for the losses and injuries suffered by (or inflicted on) the Spanish subjects, Don Pedro Montes and Don José Ruiz, during their unjust imprisonment.

4. The assurance that the course given to this affair shall never serve as a precedent in analogous cases which may occur.

The undersigned avails himself of this occasion to repeat to the Secretary of State the assurances of his high consideration.

P. A. D'ARGAÏZ.

Hon. DANIEL WEBSTER.

Mr. Webster to the Chevalier d'Argaïz.

DEPARTMENT OF STATE, *Washington, September* 1, 1841.

The undersigned has the honor to acknowledge the receipt of the note of M. d'Argaïz, envoy extraordinary and minister

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plenipotentiary of her Catholic majesty, of the 29th of May, in which he makes known to the undersigned his conviction that the sixth, eighth, ninth, and tenth articles of the treaty of 1795, between the two countries, have not properly been carried into execution, in the affair of the "Amistad," as he conceives he has proved in his correspondence, and demands: 1st, indemnification for the vessel called the "Amistad;" 2d, indemnification for the cargo, including the negroes found on board; 3d, indemnification for the losses and injuries suffered by (or inflicted on) the Spanish subjects, Don Pedro Montes and Don José Ruiz, during their unjust imprisonment; and, 4th, the assurance that the course given to this affair shall never serve as a precedent for any analogous cases that may occur.

This note has been laid before the President, and the undersigned has been by him instructed to reply as follows:

The President had supposed that, after the decision of the Supreme Court of the United States upon this question, there would have been no occasion to renew a correspondence upon it between the two governments, and that M. d'Argaïz was aware that the President had no power to review or alter any of the judgments of that court, it being a tribunal wholly independent of the executive, and one whose decisions must be regarded as final and conclusive upon all questions brought before it. He had hoped, too, that its decree would have proved satisfactory to M. d'Argaïz and the government of Spain, and that the facts proved, and the arguments offered before it, together with the able opinions delivered by its members in rendering the decree, would have prevented all disagreement or dissatisfaction with the result to which they arrived. The court was guided, in its deliberations, as well by the treaty between the two countries as by the laws of nations and of the United States, and it is not for the executive to question that its decree was in exact conformity with the obligations imposed upon it by that treaty and those laws.

No branch of the government of the United States, whether legislative, executive, or judiciary, can have been influenced by any other motives than those of a sincere desire to perform all the duties, and fulfill all the requirements exacted of either by the terms of the treaty between this government and Spain, with respect to her national character and sovereignty, and with a view of preserving and strengthening the friendly relations which have so long and so happily subsisted between them; and the undersigned hopes that M. d'Argaïz himself will eventually join in approbation of the course adopted, convinced, as he must be, of the friendly disposition of all branches of this government toward his own.

The articles to which M. d'Argaïz refers, as containing stip-

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ulations which have not been carried into effect in the case of the "Amistad," relate to the defense and protection of the persons or property of the subjects or citizens of either country which shall come within the jurisdiction of the other, by sea or land.

Of those cited, the ninth article, which provides for the safe keeping and restoration of ships and merchandise rescued from the hands of pirates and robbers, which it declares shall be restored to their true proprietor, after due and sufficient proof shall be made concerning the property thereof, seems the most applicable to the case under consideration.

The undersigned, after a careful consideration of all the arguments offered by M. d'Argaiz, and an examination of the facts which have been made known, is unable to see in what particular this article, or any stipulation contained in it, has been violated or disregarded, or that the course given to this affair has been in any manner contrary to the spirit and intention of any part of the treaty.

Upon the arrival of the schooner "Amistad" near our coast, it was, with all its cargo, according to the provisions of the ninth article, taken into the custody of the officers of the nearest port.

In consequence of a claim preferred for salvage by those who had saved both vessel and cargo, and rescued the subjects of Spain from death, or perhaps imprisonment enduring for life among the savage inhabitants of Africa, the subject of the ownership of the vessel and cargo was brought before the courts. Before those courts, also, the subjects of Spain submitted their answer to these claims and their complaints; with how much magnanimity refusing compliance with a just demand for services rendered them at such time and such a situation, the undersigned will not undertake to say. Besides the common articles of merchandise and traffic, there was found on board a number of negroes, claimed as the lawful property of Spanish subjects, and said to form part of the cargo; and on these also, as part of the cargo, salvage was claimed by those who had saved them for their owners, if they had any, and their pretended owners from them.

The whole subject, then, of the ownership of the vessel, and of all the cargo, came properly and legally before the courts, who proceeded, as was their duty under the treaty, on the presentment of such a case, to investigate it carefully, deliberately, and circumspectly.

Thus proceeding, the courts, upon the testimony before them, decided; awarding the vessel to its lawful owner, and the cargo to its respective lawful owners, and a certain amount of salvage to those who had been instrumental in saving both. It was found by the courts that the negroes were not the lawful

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property of any one, and no part of the cargo, and, consequently, subject to no claim for salvage, but that they were freemen, captured and sold, and held in bondage, contrary as well to the laws of Spain as of the United States; and the courts, in the just exercise of their power, decided, as they were bound to do, under existing laws and treaties, and upon the facts as they appeared. M. d'Argaïz demands indemnification for the vessel and cargo, including the negroes found on board. Were this government conscious of having inflicted injury upon any, whether a private individual or a powerful nation, indemnification would be readily granted; but the question of the existence of any such injury must be determined by the government itself. In this case the undersigned is of opinion that no injury has been done to any one of the subjects of Spain, but, on the contrary, that the government has gone quite as far in granting them protection, and manifesting a favorable disposition toward them, as the circumstances under which they came within its notice could demand of it.

What injury has been inflicted on the subjects of Spain, owners of the vessel and cargo, by saving both from complete destruction, or from entire loss to them, and returning both to them when their legal claims were ascertained? what injury inflicted on those presenting claims to the negroes as slaves, by refusing to allow those claims, proved to be unfounded, and, by all provisions of the code of either country, illegal and criminal? M. d'Argaïz will recollect, besides, that in his note of the 26th of November, 1839, he demands these negroes, not as property, but as criminals, or, in his own language, "not as slaves, but as assassins." Had they been at any time slaves, they would have become, by their killing and escape from lawful bondage, assassins and pirates, whose delivery to the government of Spain is not provided for in any stipulation of the treaty of 1795, and which would have been a matter of comity only, not to be demanded as a right. The one point involves the other, and a refusal to deliver them, certainly, is no violation or neglect of any obligation. But the undersigned does not propose to enter into any argument upon a subject which has already been discussed at length, both before the courts and between the two governments. M. d'Argaïz demands, also, indemnification for injuries suffered by or inflicted on the subjects of Spain, in the persons of Messrs. Ruiz and Montes. For any such losses or injuries inflicted on these persons by any one within the jurisdiction of the United States, this government offers reparation and indemnification through its courts, which stand open to hear their complaints, to ascertain and repair their wrongs, and punish the wrong-doers.

The undersigned, therefore, is instructed to say, that this

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government does not perceive with what justice any such demands as M. d'Argaïz has presented can be made on it, and confidently expects that all will agree in justifying and approving the course which it has adopted in regard to the affair. M. d'Argaïz demands, lastly, "the assurance that the course given to this affair shall never serve as a precedent in any analogous cases which may occur."

While the undersigned hopes that no misfortune of the kind will ever again take place upon our coast or elsewhere, and that no circumstances may ever again give rise to such occurrences as those which mark the affair of the "Amistad" from the commencement of her voyage, he assures M. d'Argaïz that the government of the United States will endeavor to discharge itself of all obligations imposed upon it with strict justice, honorably to itself, and respectfully toward those nations with whom it maintains amicable relations.

The undersigned avails himself of this occasion to offer to M. d'Argaïz the assurance of his very high regard and distinguished consideration. DANIEL WEBSTER.

The Chevalier D'ARGAÏZ, &c.

The Chevalier d'Argaïz to Mr. Webster.—[TRANSLATION.]

BORDENTOWN, *September* 24, 1841.

The undersigned, envoy extraordinary and minister plenipotentiary of her Catholic majesty, has the honor to acknowledge the receipt of the note which the Secretary of State of the Federal government of the Union was pleased to address to him, under date of the 1st instant, in answer to the letter from the undersigned of the 29th of May last.

The Secretary of State, before entering upon the discussion of the points to which the last note from the undersigned relates, is pleased to say, that the President had supposed that, after the decision of the Supreme Court of the United States upon this question, there would have been no occasion to renew a correspondence upon it between the two governments.

The Secretary of State, having, without doubt, carefully read the whole of the correspondence which has passed between the Department of State and the legation of her Catholic majesty upon this subject, since the arrival of the schooner "Amistad" at the port of New London, will have therein observed that [this legation] has ever and constantly protested against the jurisdiction of the courts of the United States; inasmuch as, the case falling under the provisions of the treaty of 1795, it should be decided solely and exclusively by the executive, and not by any other power. This the Federal government of the Union could not but admit, and did in fact admit, when the Secretary of State's predecessor said to the undersigned, in his

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note of the 12th December, 1839: "In connection with one of the points in the Chevalier d'Argaiz's last note, the undersigned will assure him that, whatever be in the end the disposal of the question, it will be in consequence of a decision emanating from no other source than the government of the United States; and that if the agency of the judicial authority shall have been employed in conducting the investigation of the case, [it] is because the judiciary is, by the organic law of the land, a portion, though an independent one, of that government." Relying upon this, and upon this promise, the undersigned quietly awaited the conclusion of the affair; as did also the government of her Catholic majesty, not doubting that, though the courts of the United States might go so far as to investigate the facts, the final and decisive determination would in any event come from the executive power, as had been promised. Under these circumstances, the undersigned does not think that the government of the Union should be surprised at the continuation of a correspondence in which, besides the maintenance of a right considered by the undersigned as indisputable, compliance with a promise is also claimed. If, moreover, the President has not the power to destroy or to change in the slightest degree a decision of the Supreme Court of the United States, her Catholic majesty's government can not agree [*conformaise*—allow, submit to] that the consequence of this should be, in the present case, the open violation of a treaty, which ought to be respected as the supreme law of the United States.

The Secretary of State says that "the court was guided, in its deliberations, as well by the treaty between the two countries as by the law of nations and of the United States, and it is not for the executive to question that its decree was in exact conformity with the obligations imposed upon it by that treaty and those laws." The undersigned regrets that there should be between the Secretary of State and himself so great a difference in the manner of regarding this point; for, if the court of the Union possess the right of interpreting, considering, and deciding upon treaties contracted between nation and nation, and the executive power can not inquire whether their decrees are or are not conformable with justice, it would be as well to declare that, in order to give to treaties the force of treaties, or, at least, to render them obligatory, they should be concluded with the judicial power, or, in better words, that treaties should be made, for them to be afterward interpreted as the courts might think proper.

The enlightened Secretary of State will agree with the undersigned that one of the things which principally constitute the independence of a country is the jurisdiction of its courts, or, in other words, that no nation, nor its courts, should assume

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the faculty of pronouncing judicially upon acts committed within the jurisdiction of another. On this principle, the undersigned can not conceive how the Secretary of State could for a single moment have supposed that the undersigned would have agreed to, and have seen with satisfaction, the decision of a court of the United States, pronounced upon acts appertaining to Spanish subjects, committed on board of a Spanish vessel, and in the waters of a Spanish territory, within the purview of a treaty and of the law of nations.

The Secretary of State is also pleased to observe, "that the schooner 'Amistad,' upon her arrival on this coast, was, with all her cargo, according to the provisions of the ninth article, taken into the custody of the officers of the nearest port, and that, in consequence of a claim for salvage, the subject of the ownership of the vessel and cargo was brought before the courts." The undersigned will not stop to remark upon the magnanimity of a demand for salvage preferred by officers of a ship of war of the United States. But does the Secretary of State believe that this can justify the intervention of the courts of the United States in this case, contrary to the opinion given by the attorney-general, Mr. Grundy, and after, moreover, the officers themselves had renounced their claim to salvage, as Lieutenant Gedney, the commander of the Washington, himself declared to the undersigned?

The Secretary of State also says, that "it was found by the courts that the negroes were not the lawful property of any one." One violation of necessity brought on another, not less unjust; for the judges of the United States, in order to ascertain whether or not the Africans were the lawful property of Spanish subjects, thought proper to examine the papers found on board of the vessel, which had been given by the authorities of her Catholic majesty in the Island of Cuba. This was a recognition of the right of search, which, besides its not being authorized by any nation, has been combated by writers on public law, and most particularly, in the case in question, by the distinguished jurist Mr. Grundy, attorney-general of the Union at the time when the schooner "Amistad" arrived on the Anglo-American coasts. (See his opinion on this case.)

With all these considerations in view, and after having carefully examined the note of the Secretary of State, the undersigned can not comprehend upon what that gentleman founds his assertion, that the courts of the United States could properly and lawfully take cognizance of this case.

There is, however, one circumstance which the undersigned considers well worthy of remark, as the Secretary of State says that court decided that the vessel and her cargo belonged to their lawful owners. As the vessel and cargo had been pub-

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licly sold—by whose orders or how, neither the undersigned nor the owners knew—nothing seems to be more just and equitable than to indemnify promptly, duly, and fully those whose property had been unjustly taken away, in manifest contradiction to the sense and letter of the ninth article of the treaty of 1795; yet when the undersigned claims the indemnification so justly due, the Secretary of State makes no reply on this point, limiting himself, as may be seen in the twelfth paragraph of his note to the declaration, that "were the government of the United States conscious of having inflicted injury upon any, whether a private individual or a powerful nation, indemnification would be readily granted." The undersigned conceives that the fact of individuals, subjects of her Catholic majesty, having been arbitrarily deprived of their vessel and cargo should be sufficient to produce the conviction that indemnification is due to them.

The Secretary of State asks: "What injury has been inflicted on the subjects of Spain, owners of the vessel and cargo, by saving both from complete destruction or from entire loss to them, and returning both to them when their legal claims were ascertained?" In the first place, the undersigned sees with regret that the Secretary of State is under an erroneous impression, for her Catholic majesty's subjects have not received, to this day, either the vessel or her cargo; and how could they have been delivered to them, since they were sold during the absence of those subjects, and without their knowledge? The undersigned will, on his side, ask, in what point have the stipulations of the eighth article of the treaty of 1795 been fulfilled toward her Catholic majesty's subjects, Don José Ruiz and Don Pedro Montes? Have they been *treated with humanity? Have all favor, protection, and help* been extended to them? Have they been *permitted to remove and depart, when and whither they pleased, without let or hinderance?* The unjust imprisonment which they suffered for several months will serve as an answer to these questions.

The undersigned can not in any way admit the supposition advanced by the Secretary of State, that, "even had the negroes been at any time slaves, they would not have become, by their killing and escape from lawful bondage, assassins and pirates, whose delivery to the government of Spain, not having been provided for in any stipulations of the treaty of 1795, would have been a matter of comity only, not to be demanded as a right." The treaty of 1795 unquestionably does not provide for the delivery of pirates or assassins, but only because the contracting parties could never have imagined that a case like the present could have occasioned doubts of any kind, and because the point was so clear that they did not think it necessary to take it into consideration. Who can foresee the horri-

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ble consequences which may result, as well in the islands of Cuba and Porto Rico as in the Southern States of the Union, should the slaves come to learn—and there will be no want of persons to inform them—that, on murdering, killing, and flying from lawful captivity whensoever they may be in transportation from one point of the islands to another, and coming to the United States, the delivery of them, on account of their having murdered, killed, or fled, can not be demanded as a right? The undersigned leaves to the characteristic penetration of the Secretary of State [the task of imagining] the severe incalculable evils which may be occasioned by realizing this supposition.

The undersigned duly acknowledges the favor of the offer made by the Secretary of State to the Spanish subjects Ruiz and Montes, that the courts of the United States would be open for them to present their complaints on account of injuries or personal sufferings. To these courts natives as well as foreigners can indifferently have recourse; but Messrs. Montes and Ruiz are in a particular position, in which they are placed as well by the treaty of 1795 as by the law of nations, and, in order to preserve it, they magnanimously suffered a severe imprisonment for months. As they have, in consequence, placed themselves under the protection of her Catholic majesty's legation, they will through it, as the undersigned hopes, obtain a happy result from their complaints.

In consideration of all that has been here set forth, the undersigned takes pleasure in believing that the Secretary of State will find his demands just and well founded, and will, he doubts not, take proper measures for arriving at the happy consummation which he promises to himself. The undersigned, at the same time, thinks it his duty to state that he has received express orders from his government to protest, in the most solemn and formal manner, against all that has been done by the courts of the United States in the case of the schooner Amistad, the fulfillment of this order being one of the principal objects which the undersigned proposed to accomplish by this note.

The undersigned can not conclude this communication without conveying to the Secretary of State his acknowledgments for the expression of his desire to preserve unbroken the old and friendly relations which, fortunately and for their mutual prosperity, bind Spain to the United States. The undersigned and his government cherish the same desires; and, with this understanding, he flatters himself that he will shortly receive a proof of the scrupulous exactness with which the government of the Union fulfills the treaties and stipulations which unite it with other friendly nations.

The undersigned avails himself of this opportunity to repeat

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to the Secretary of State the assurances of his high esteem and distinguished consideration. P. A. D'ARGAÏZ,

Hon. DANIEL WEBSTER, *Secretary of State of the United States.*

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Mr. Webster to the Chevalier d'Argaïz.

DEPARTMENT OF STATE, *Washington, June* 21, 1842.

The Secretary of State has to acknowledge the receipt of the note of the 24th of September, which M. d'Argaïz did him the honor to address to him.

Viewing that note as intended mainly for a protest against the proceedings of this government in the case of the "Amistad," the undersigned did not think a reply was desired, or that any advantage would ensue from further prolonging the discussion.

Understanding now, from conversation with M. d'Argaïz, that a reply is expected, the undersigned proceeds to offer some remarks on the subject of M. d'Argaïz's note.

The undersigned did certainly suppose that the communication to M. d'Argaïz of the decision of the Supreme Court would close the correspondence on that subject. The immediate predecessor of the undersigned, whose remarks, as quoted by M. d'Argaïz, the undersigned well remembers, meant, and could have meant nothing more, by those remarks, than that the decision of the Supreme Court would be the decision of the government. Mr. Forsyth does not use the word executive in this connection. He says, "Government." "Whatever be, in the end, the disposal of the question, it will be in consequence of a decision emanating from no other source than the government of the United States."

The Supreme Court is a part of that government, as Mr. Forsyth remarks; and its decision, in matters lawfully within its jurisdiction, is the final decision of the government of the United States upon such matters.

M. d'Argaïz seems to think that a treaty stipulation can not be subjected to the interpretation of the judicial authority, and proceeds to remark, that, "if the courts of the Union possess the right of interpreting, considering, and deciding upon treaties contracted between nation and nation, and the executive power can not inquire whether their decrees are or are not conformable with justice, it would be as well to declare that, in order to give to treaties the force of treaties, or, at least, to render them obligatory, they should be concluded with the judicial power, or, in better words, that treaties should be made, for them to be afterward interpreted as the courts might think proper." But the undersigned supposes that nothing is more common, in countries where the judiciary is an independent branch of the government, than for questions arising under treaties to be

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submitted to its decision. Indeed, in all regular governments questions of private right, arising under treaty stipulations, are in their nature judicial questions. With us, a treaty is part of the supreme law of the land; as such it influences and controls the decisions of all tribunals; and many instances might be quoted of decisions made in the Supreme Court of the United States, arising under their several treaties with Spain herself, as well as under treaties between the United States and other nations. Similar instances of judicial decisions on points arising under treaties may be found in the history of France, England, and other nations; and, indeed, the undersigned would take the liberty to remind the Chevalier d'Argaïz that this very treaty of 1795 has been made the subject of judicial decision by a Spanish tribunal.

The undersigned would call to the recollection of the Chevalier d'Argaïz the case of Mr. D. Hareng, in which the Spanish colonial courts decided according to their sense of the intention of the treaty of 1795, and the intendant confirmed their decree, which was, that nothing in that treaty exempted Mr. Hareng from the payment of certain demands. From this decision this government was inclined to dissent, but never questioned the right and duty of a Spanish court to consider the intent and effect of a treaty.

M. d'Argaïz states: "The enlightened Secretary of State will agree with the undersigned that one of the things which principally constitute the independence of a country is the jurisdiction of its courts, or, in other words, that no nation, nor its courts, should assume the faculty of pronouncing judicially upon acts committed within the jurisdiction of another. On this principle, the undersigned can not conceive how the Secretary of State could for a single moment have supposed that the undersigned would have agreed to, and have seen with satisfaction, the decision of a court of the United States, pronounced upon acts appertaining to Spanish subjects, committed on board of a Spanish vessel, and in the waters of a Spanish territory, within the purview of a treaty and of the law of nations.

"The Secretary of State is also pleased to observe, 'that the schooner "Amistad," upon her arrival on this coast, was, with all her cargo, according to the provisions of the ninth article, taken into the custody of the officers of the nearest port, and that, in consequence of a claim for salvage, the subject of the ownership of the vessel and cargo was brought before the courts.' The undersigned will not stop to remark upon the magnanimity of a demand for salvage preferred by officers of a ship of war of the United States. But does the Secretary of State believe that this can justify the intervention of the courts of the United States in this case, contrary to the opinion given by

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the attorney-general, Mr. Grundy, and after, moreover, the officers themselves had renounced their claim to salvage, as Lieutenant Gedney, the commander of the Washington, himself declared to the undersigned? The Secretary of State also says, 'that it was found by the courts that the negroes were not the lawful property of any one.' One violation of necessity brought on another, not less unjust; for the judges of the United States, in order to ascertain whether or not the Africans were the lawful property of Spanish subjects, thought proper to examine the papers found on board of the vessel, which had been given by the authorities of her Catholic majesty in the Island of Cuba. This was a recognition of the right of search, which, besides its not being authorized by any nation, has been combated by writers on public law, and most particularly, in the case in question, by the distinguished jurist, Mr. Grundy, attorney-general of the Union, at the time when the schooner 'Amistad' arrived on the Anglo-American coasts. (See his opinion on the case.)"

The undersigned will make one more attempt to state the general occurrences of this transaction so plainly that he can not be misunderstood, with a hope of convincing M. d'Argaïz that nothing has been done by the authorities of the United States, or any of them, not in strict accordance with the principles of public law and the practice of nations; nothing which can be complained of with justice as an encroachment upon Spanish territories, or visiting and searching Spanish vessels. The succinct history of the case is the most complete justification which can be made of all that has been done in regard to it in the United States.

Lieutenant Gedney, of the United States brig Washington, on the 27th of June, 1839, discovered the Spanish schooner "Amistad," then at anchor within half a mile of the shore of the United States. The vessel was then in possession of certain blacks, who had risen upon and killed the captain. Lieutenant Gedney took possession of and brought in the vessel to the United States, and for this service claimed salvage upon the common principles of maritime law. The possession of the vessel had become already lost to her owners; and to save her from entire destruction, and to restore her to those owners, was esteemed a meritorious service. The Chevalier d'Argaïz must certainly understand, that when merchant vessels are met with at sea so shattered by storms and tempests, or other disasters, or so deprived of their crew as to be unable to prosecute their voyages, in all such cases other vessels falling in with them and saving them are entitled to reasonable compensation; and, to ascertain the amount of this compensation, the vessel is to be brought in, subjected to judicial proceedings, and justice

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rendered the claimants and salvors, according to well-established rules and principles.

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Spain herself, in the early ages of commerce, was among the first to establish the principles, and lead in the administration, of this part of the maritime law, and these principles now prevail over the whole commercial world; and the highest judicial authority in the United States, acting under the influence of the same rules which must have controlled the decisions of an English tribunal, a French tribunal, or a Spanish tribunal, has decided that the case was a case for salvage, and has decreed to the salvors a just compensation. The undersigned is, therefore, quite at a loss to conceive how this transaction can be deemed an encroachment upon the jurisdiction of Spain, or an unlawful visitation and search of Spanish vessels. At the institution of proceedings in the court, claims were interposed on behalf of Spanish subjects for the vessel and cargo, which were allowed, subject to salvage.

Claims were also interposed for the negroes found on board, which were claimed as slaves, and the property of Spanish subjects. On the other hand, the negroes denied that they were slaves, and the property of Spanish subjects or any other persons. It was impossible for the courts to avoid the decisions of the questions thus brought before them; and, in deciding them, it was bound to regard the law of nations, the laws of Spain, the treaty between Spain and the United States, the laws of the United States, and the evidence produced in the case.

Proceeding upon these grounds, after a very patient investigation, and the hearing of elaborate arguments, the court decided that the negroes found on board the Amistad, with one exception, were not slaves, nor the property of any body, but were free persons, and therefore decreed that they should be set at liberty. All this appears to the undersigned to be in the common course of such affairs. The questions in which Spanish subjects were interested have been heard and tried before competent tribunals, and one of them has been decided against the Spanish subjects; but this can give no possible ground of complaint on the part of Spain, unless Spain can show that the tribunal has acted corruptly, or has decided wrong in a case in no degree doubtful. Nations are bound to maintain respectable tribunals, to which the subjects of states at peace may have recourse for the redress of injuries and the maintenance of their rights. If the character of these tribunals be respectable, impartial, and independent, their decisions are to be regarded as conclusive.

The United States have carried the principle of acquiescence, in such cases, as far as any nation upon earth, and, in respect

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to the decisions of Spanish tribunals, quite as frequently, perhaps, as in respect to the tribunals of any other nation.

In almost innumerable cases of reclamations sought by citizens of the United States against Spain for alleged captures, seizures, and other wrongs committed by Spanish subjects, the answer has been that the question has been fairly tried before an impartial Spanish tribunal, having competent jurisdiction, and decided against the claimant; and in the sufficiency of this answer the government of the United States has acquiesced.

If the tribunal be competent, if it be free from unjust influence, if it be impartial and independent, and if it has heard the case fully and fairly, its judgment is to stand as decisive of the matter before it. This principle governs in regard to the decisions of courts of common law, courts of equity, and especially courts of admiralty, where proceedings so often affect the rights and interests of citizens of foreign states and governments.

M. d'Argaïz complains that the vessel and cargo were sold, and that loss thereby happened to the owners. But all this was inevitable, and no blame attaches on account of it to the tribunal. In cases of an allowance for salvage, if the owner be not present and ready to pay the amount, the property must necessarily be sold, that the proceeds be properly apportioned between owner and salvor. This is a daily occurrence in every court of admiralty in the world. Sufficient notice of the intended sale was given in legal form, in order that the claimants might be present, or might, if they pleased, prevent it, by paying the amount awarded for salvage, and receive their property.

The Chevalier d'Argaïz complains that Messrs. Montes and Ruiz suffered an unjust imprisonment in the United States. The undersigned can not but think that such an allegation of injury, put forth in behalf of Messrs. Montes and Ruiz, is not a little extraordinary. These persons themselves had held in unjust and cruel confinement certain negroes who, it appeared on trial, were as free as themselves, and these negroes, finding themselves within the protection of equal laws, sought redress, by a regular appeal to those laws, for the injuries which they had suffered. The pursuit of this redress by the injured parties, it appears, subjected Messrs. Ruiz and Montes to a temporary imprisonment. In the judgment of enlightened men, they will probably be thought to have been very fortunate in escaping severer consequences. M. d'Argaïz's note contains a paragraph of the following tenor:

"The undersigned can not in any way admit the supposition advanced by the Secretary of State, that, 'even had the negroes been at any time slaves, they would not have become, by their killing and escape from lawful bondage, assassins and pirates, whose delivery to the government of Spain, not having

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been provided for in any stipulations of the treaty of 1795, would have been a matter of comity only, not to be demanded as a right. The treaty of 1795, unquestionably, does not provide for the delivery of pirates or assassins, but only because the contracting parties could never have imagined that a case like the present could have occasioned doubts of any kind, and because the point was so clear that they did not think it necessary to take it into consideration. Who can foresee the horrible consequences which may result, as well in the islands of Cuba and Porto Rico as in the Southern States of the Union, should the slaves come to learn—and there will be no want of persons to inform them—that, on murdering, killing, and flying from lawful captivity whensoever they may be in transportation from one point of the islands to another, and coming to the United States, the delivery of them, on account of their having murdered, killed, or fled, can not be demanded as a right? The undersigned leaves to the characteristic penetration of the Secretary of State [the task of imagining] the severe incalculable evils which may be occasioned by realizing this supposition."

The undersigned must beg leave to differ entirely from M. d'Argaïz in regard to the rule of law for delivering up criminals and fugitives from justice. Although such extradition is sometimes made, yet, in the absence of treaty stipulations, it is always matter of comity or courtesy. No government is understood to be bound by the positive law of nations to deliver up criminals, fugitives from justice, who have sought an asylum within its limits. The government of the United States has had occasion to hold intercourse on this question with England, France, Russia, Denmark, and Sweden; and it understands it to be the sentiment of all these governments, as well as the judgment of standard writers on public law, that, in the absence of provisions by treaty, the extradition of fugitive offenders is a matter resting in the option and discretion of every government.

The undersigned has thus once more gone over the circumstances of this case, and stated the view which the government of the United States has of it. He sincerely and confidently hopes that the Chevalier d'Argaïz will perceive that this government has violated none of its obligations to Spain, or done injustice, in any manner whatever, to any Spanish subject.

The undersigned avails himself of this occasion to renew to the Chevalier d'Argaïz assurances of his high consideration.

DANIEL WEBSTER.

The Chevalier d'Argaïz, &c.

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CHINA AND THE SANDWICH ISLANDS.

Message from the President of the United States, respecting the Trade and Commerce of the United States with the Sandwich Islands, and of Diplomatic Intercourse with their Government; also, in relation to the new Position of Affairs in China, growing out of the late War between Great Britain and China, and recommending Provision for a Diplomatic Agent, December 31, 1842.

To the House of Representatives of the United States:

I COMMUNICATE herewith to Congress copies of a correspondence which has recently taken place between certain agents of the government of the Hawaiian, or Sandwich Islands, and the Secretary of State.

The condition of those islands has excited a good deal of interest, which is increasing by every successive proof that their inhabitants are making progress in civilization, and becoming more and more competent to maintain regular and orderly civil government. They lie in the Pacific Ocean, much nearer to this Continent than the other, and have become an important place for the refitment and provisioning of American and European vessels.

Owing to their locality, and to the course of the winds which prevail in this quarter of the world, the Sandwich Islands are the stopping-place for almost all vessels passing from continent to continent across the Pacific Ocean. They are especially resorted to by the great numbers of vessels of the United States which are engaged in the whale fishery in those seas. The number of vessels of all sorts, and the amount of property owned by citizens of the United States which are found in those islands in the course of a year, are stated, probably with sufficient accuracy, in the letter of the agents.

Just emerging from a state of barbarism, the government of the islands is as yet feeble; but its dispositions appear to be just and pacific, and it seems anxious to improve the condition of its people by the introduction of knowledge, of religious and moral institutions, means of education, and the arts of civilized life.

It can not but be in conformity with the interest and the wishes of the government and the people of the United States, that this community, thus existing in the midst of a vast expanse of ocean, should be respected, and all its rights strictly and conscientiously regarded. And this must also be the true

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interest of all other commercial states. Far remote from the dominions of European powers, its growth and prosperity as an independent state may yet be in a high degree useful to all whose trade is extended to those regions, while its nearer approach to this Continent, and the intercourse which American vessels have with it—such vessels constituting five sixths of all which annually visit it—could not but create dissatisfaction on the part of the United States at any attempt by another power, should such attempt be threatened or feared, to take possession of the islands, colonize them, and subvert the native government. Considering, therefore, that the United States possesses so very large a share of the intercourse with those islands, it is deemed not unfit to make the declaration, that their government seeks nevertheless no peculiar advantages, no exclusive control over the Hawaiian government, but is content with its independent existence, and anxiously wishes for its security and prosperity. Its forbearance in this respect, under the circumstances of the very large intercourse of their citizens with the islands, would justify this government, should events hereafter arise to require it, in making a decided remonstrance against the adoption of an opposite policy by any other power. Under the circumstances, I recommend to Congress to provide for a moderate allowance to be made out of the treasury to the consul residing there, that, in a government so new and a country so remote, American citizens may have respectable authority to which to apply for redress in case of injury to their persons and property, and to whom the government of the country may also make known any acts committed by American citizens, of which it may think it has a right to complain.

Events of considerable importance have recently transpired in China. The military operations carried on against that empire by the English government have been terminated by a treaty, according to the terms of which four important ports, hitherto shut against foreign commerce, are to be open to British merchants, viz.: Amoy, Foo-Choo-Foo, Ningpo, and Chinghai. It can not but be interesting to the mercantile interest of the United States, whose intercourse with China at the single port of Canton has already become so considerable, to ascertain whether these other ports, now open to British commerce, are to remain shut, nevertheless, against the commerce of the United States. The treaty between the Chinese government and the British commissioner provides neither for the admission nor the exclusion of the ships of other nations. It would seem, therefore, that it remains with every other nation having commercial intercourse with China to seek to make proper arrangements for itself with the government of that empire in this respect.

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The importations into the United States from China are known to be large, having amounted in some years to nine millions of dollars. The exports, too, from the United States to China constitute an interesting and growing part of the commerce of the country. It appears that, in the year 1841, in the direct trade between the two countries, the value of the exports from the United States amounted to $715,000 in domestic produce, and $485,000 in foreign merchandise. But the whole amount of American produce which finally reaches China, and is there consumed, is not comprised in these sums, which include only the direct trade. Many vessels with American products on board sail with a primary destination to other countries, but ultimately dispose of more or less of their cargoes in the port of Canton.

The peculiarities of the Chinese government and the Chinese character are well known. An empire supposed to contain 300,000,000 of subjects, fertile in various rich products of the earth, not without the knowledge of letters and of many arts, and with large and expensive accommodations for internal intercourse and traffic, has for ages sought to exclude the visits of strangers and foreigners from its dominions, and has assumed for itself a superiority over all other nations. Events appear likely to break down and soften this spirit of non-intercourse, and to bring China, ere long, into the relations which usually subsist between civilized states. She has agreed in the treaty with England that correspondence between the agents of the two governments shall be on equal terms: a concession which it is hardly probable will hereafter be withheld from other nations.

It is true, that the cheapness of labor among the Chinese, their ingenuity in its application, and the fixed character of their habits and pursuits, may discourage the hope of the opening of any great and sudden demand for the fabrics of other countries; but experience proves that the productions of Western nations find a market, to some extent, among the Chinese; that that market, so far as respects the productions of the United States, although it has considerably varied in successive seasons, has, on the whole, more than doubled within the last ten years; and it can hardly be doubted that the opening of several new and important ports, connected with parts of the empire heretofore seldom visited by Europeans or Americans, would exercise a favorable influence upon the demand for such productions.

It is not understood that the immediate establishment of correspondent embassies and missions, or the permanent residence of diplomatic functionaries, with full powers, of each country, at the court of the other, is contemplated between England and

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China; although, as has been already observed, it has been stipulated that intercourse between the two countries shall hereafter be on equal terms. An embassador, or envoy extraordinary and minister plenipotentiary, can only be accredited, according to the usages of Western nations, to the head or sovereign of the state; and it may be doubtful whether the court of Pekin is yet prepared to conform to these usages, so far as to receive a minister plenipotentiary to reside near it.

Being of opinion, however, that the commercial interests of the United States connected with China require, at the present moment, a degree of attention and vigilance such as there is no agent of this government on the spot to bestow, I recommend to Congress to make appropriation for the compensation of a commissioner to reside in China, to exercise a watchful care over the concerns of American citizens, and for the protection of their persons and property; empowered to hold intercourse with the local authorities, and ready, under instructions from his government, should such instructions become necessary and proper hereafter, to address himself to the high functionaries of the empire, or, through them, to the emperor himself.

It will not escape the observation of Congress, that, in order to secure the important objects of any such measure, a citizen of much intelligence and weight of character should be employed on such agency; and that, to secure the services of such an individual, a compensation should be made corresponding with the magnitude and importance of the mission.

JOHN TYLER.

WASHINGTON, *December* 30, 1842.

Mr. Webster to Mr. Cushing.

DEPARTMENT OF STATE, *Washington, May* 8, 1843.

SIR,—You have been appointed by the President commissioner to China, and envoy extraordinary and minister plenipotentiary of the United States to the court of that empire. The ordinary general or circular letter of instructions will be placed in your hands, and another letter stating the composition or organization of the mission, your own allowances, the allowance of the secretary, and other matters connected with the expenditures about to be incurred under the authority of Congress.

It now remains for this department to say something of the political objects of the mission, and the manner in which it is hoped those objects may be accomplished. It is less necessary than it might otherwise be to enter into a detailed statement of the considerations which have led to the institution of the mission, not only as you will be furnished with a copy of the

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President's communication to Congress recommending provision to be made for the measure, but also as your connection with Congress has necessarily brought those considerations to your notice and contemplation.

Occurrences happening in China within the last two years have resulted in events which are likely to be of much importance as well to the United States as to the rest of the civilized world. Of their still more important consequences to China herself it is not necessary here to speak. The hostilities which have been carried on between that empire and England have resulted, among other consequences, in opening four important ports to English commerce, viz.: Amoy, Ning-po, Shang-hai, and Fu-chow.

These ports belong to some of the richest, most productive, and most populous provinces of the empire, and are likely to become very important marts of commerce. A leading object of the mission in which you are now to be engaged is, to secure the entry of American ships and cargoes into these ports on terms as favorable as those which are enjoyed by English merchants. It is not necessary to dwell here on the great and well-known amount of imports of the productions of China into the United States. These imports, especially in the great article of tea, are not likely to be diminished. Heretofore they have been paid for in the precious metals, or, more recently, by bills drawn on London. At one time, indeed, American paper of certain descriptions was found to be an available remittance. Latterly, a considerable trade has sprung up in the export of certain American manufactures to China. To augment these exports, by obtaining the most favorable commercial facilities, and cultivating, to the greatest extent practicable, friendly commercial intercourse with China in all its accessible ports, is matter of moment to the commercial and manufacturing as well as the agricultural and mining interests of the United States. It can not be foreseen how rapidly or how slowly a people of such peculiar habits as the Chinese, and apparently so tenaciously attached to those habits, may adopt the sentiments, ideas, and customs of other nations. But if prejudiced, and strongly wedded to their own usages, the Chinese are still understood to be ingenious, acute, and inquisitive. Experience thus far, if it does not strongly animate and encourage efforts to introduce some of the arts and the products of other countries into China, is not, nevertheless, of a character such as should entirely repress those efforts. You will be furnished with accounts, as accurate as can be obtained, of the history and present state of the export trade of the United States to China.

As your mission has in view only friendly and commercial

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objects—objects, it is supposed, equally useful to both countries—the natural jealousy of the Chinese, and their repulsive feeling toward foreigners, it is hoped, may be in some degree removed or mitigated by prudence and address on your part. Your constant aim must be, to produce a full conviction on the minds of the government and the people that your mission is entirely pacific; that you come with no purposes of hostility or annoyance; that you are a messenger of peace, sent from the greatest power in America to the greatest empire in Asia, to offer respect and good-will, and to establish the means of friendly intercourse. It will be expedient, on all occasions, to cultivate the friendly dispositions of the government and people, by manifesting a proper respect for their institutions and manners, and avoiding, as far as possible, the giving of offense either to their pride or their prejudices. You will use the earliest and all succeeding occasions to signify that the government which sends you has no disposition to encourage, and will not encourage, any violation of the commercial regulations of China by citizens of the United States. You will state in the fullest manner the acknowledgment of this government, that the commercial regulations of the empire, having become fairly and fully known, ought to be respected by all ships and all persons visiting its ports; and if citizens of the United States, under these circumstances, are found violating well-known laws of trade, their government will not interfere to protect them from the consequences of their own illegal conduct. You will at the same time assert and maintain, on all occasions, the equality and independence of your own country. The Chinese are apt to speak of persons coming into the empire from other nations as tribute-bearers to the emperor. This idea has been fostered, perhaps, by the costly parade of embassies from England. All ideas of this kind respecting your mission must, should they arise, be immediately met by a declaration, not made ostentatiously, or in a manner reproachful toward others, that you are no tribute-bearer; that your government pays tribute to none, and expects tribute from none; and that, even as to presents, your government neither makes nor accepts presents. You will signify to all Chinese authorities, and others, that it is deemed to be quite below the dignity of the Emperor of China and the President of the United States of America to be concerning themselves with such unimportant matters as presents from one to the other; that the intercourse between the heads of two such governments should be made to embrace only great political questions, the tender of mutual regard, and the establishment of useful relations.

It is, of course, desirable that you should be able to reach Pekin, and the court and person of the emperor, if practicable.

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You will, accordingly, at all times signify this as being your purpose and the object of your mission; and perhaps it may be well to advance as near to the capital as shall be found practicable, without waiting to announce your arrival in the country. The purpose of seeing the emperor in person must be persisted in as long as may be becoming and proper. You will inform the officers of the government that you have a letter of friendship from the President of the United States to the emperor, signed by the President's own hand, which you can not deliver except to the emperor himself, or some high officer of the court in his presence. You will say, also, that you have a commission conferring on you the highest rank among representatives of your government; and that this, also, can only be exhibited to the emperor, or his chief officer. You may expect to encounter, of course, if you get to Pekin, the old question of the *Kotou*. In regard to the mode of managing this matter, much must be left to your discretion, as circumstances may occur. All pains should be taken to avoid the giving of offense, or the wounding of the national pride; but, at the same time, you will be careful to do nothing which may seem, even to the Chinese themselves, to imply any inferiority on the part of your government, or any thing less than perfect independence of all nations. You will say that the government of the United States is always controlled by a sense of religion and of honor; that nations differ in their religious opinions and observances; that you can not do any thing which the religion of your own country or its sentiments of honor forbid; that you have the most profound respect for his majesty the emperor; that you are ready to make to him all manifestations of homage which are consistent with your own sense, and that you are sure his majesty is too just to desire you to violate your own duty; that you should deem yourself quite unworthy to appear before his majesty, as peace-bearer from a great and powerful nation, if you should do any thing against religion or against honor, as understood by the government and people in the country you come from. Taking care thus in no way to allow the government or people of China to consider you as tribute-bearer from your government, or as acknowledging its inferiority, in any respect, to that of China, or any other nation, you will bear in mind, at the same time, what is due to your own personal dignity and the character which you bear. You will represent to the Chinese authorities, nevertheless, that you are directed to pay to his majesty the emperor the same marks of respect and homage as are paid by your government to his majesty the Emperor of Russia, or any other of the great powers of the world.

A letter signed by the President, as above intimated, and

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addressed to the emperor, will be placed in your hands. As has been already stated, you will say that this letter can only be delivered to the emperor, or to some one of the great officers of state in his presence. Nevertheless, if this can not be done, and the emperor should still manifest a desire to receive the letter, you may consider the propriety of sending it to him, upon an assurance that a friendly answer to it shall be sent, signed by the hand of the emperor himself.

It will be no part of your duty to enter into controversies which may exist between China and any European state; nor will you, in your communications, fail to abstain altogether from any sentiment or any expression which might give to other governments just cause of offense. It will be quite proper, however, that you should, in a proper manner, always keep before the eyes of the Chinese the high character, importance, and power of the United States. You may speak of the extent of their territory, their great commerce spread over all seas, their powerful navy every where giving protection to that commerce, and the numerous schools and institutions established in them, to teach men knowledge and wisdom. It can not be wrong for you to make known, where not known, that the United States, once a country subject to England, threw off that subjection years ago, asserted their independence, sword in hand, established that independence after a seven years' war, and now meet England upon equal terms upon the ocean and upon the land. The remoteness of the United States from China, and still more the fact that they have no colonial possessions in her neighborhood, will naturally lead to the indulgence of a less suspicious and more friendly feeling than may have been entertained toward England, even before the late war between England and China. It can not be doubted that the immense power of England in India must be regarded by the Chinese government with dissatisfaction, if not with some degree of alarm. You will take care to show strongly how free the Chinese government may well be from all jealousy arising from such causes toward the United States. Finally, you will signify, in decided terms and a positive manner, that the government of the United States would find it impossible to remain on terms of friendship and regard with the emperor, if greater privileges or commercial facilities should be allowed to the subjects of any other government than should be granted to citizens of the United States.

It is hoped and trusted that you will succeed in making a treaty such as has been concluded between England and China; and if one containing fuller and more regular stipulations could be entered into, it would be conducting Chinese intercourse one

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step further toward the principles which regulate the public relations of the European and American states.

I am, sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

HON. CALEB CUSHING.

Mr. Webster to Mr. Cushing.

DEPARTMENT OF STATE, *Washington, May* 8, 1843.

SIR,—The President having appointed you commissioner to China in the place of Mr. Everett, who has declined to accept that appointment, this department is now to give you the necessary instructions for your mission.

You will receive herewith two commissions: one as commissioner, under which you will be authorized to treat with the governors of provinces or cities, or other local authorities of China; and one as envoy extraordinary and minister plenipotentiary, to be presented at Pekin, if you should reach the emperor's court.

You will likewise be furnished with,

1. A full power, authorizing you to sign any treaty which may be concluded between you and any person duly authorized for that purpose by the Emperor of China.

2. A letter of credence to the emperor, with an office copy thereof; the original to be communicated or delivered to the sovereign in such manner as may be most convenient or agreeable to his majesty to receive it.

3. A special passport for yourself and suite.

4. A letter of credit on Baring, Brothers, & Co., bankers of the United States at London, authorizing them to pay your drafts, from time to time, for an amount not exceeding twenty-five thousand dollars.

5. A printed list of the ministers and other diplomatic and consular agents of the United States abroad.

6. Laws of the United States, 9 vols., and pamphlet copies of the Acts of the Twenty-sixth and Twenty-seventh Congresses.

7. Congressional Debates (Gales and Seaton's), 8vo, 31 vols.

8. Gales and Seaton's American State Papers, folio, 21 vols.

9. Waite's State Papers, 12mo, 12 vols.

10. Diplomatic Correspondence (Sparks's), 12mo, 19 vols.

11. Diplomatic Code (Elliott's), 8vo, 2 vols.

12. American Almanac for 1843, 12mo, 1 vol.

13. Blue Book for 1841, 1 vol.

14. Commercial Regulations, 8vo, 3 vols.

15. American Archives (Force's), folio, 3 vols.

16. Secret Journals of Congress, 4 vols.

17. Journal of Federal Convention, 1 vol.

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18. Sixth Census of the United States, 4 vols.

19. Congressional Documents of the Second Session of the Twenty-sixth Congress.

20. Congressional Documents of the First Session of the Twenty-seventh Congress.

21. Senate Documents of the Second Session of the Twenty-seventh Congress.

22. Printed Documents connected with the "Northeastern Boundary" Negotiation.

All the printed books are for the use of the mission; and, at the termination of your service, are to pass to your successor, or be left with the archives in the hands of the *chargé d'affaires*, in case one should be named, or of such other person as may be designated by this department to take charge of them.

The act of Congress places at the disposition of the President the sum of forty thousand dollars, as an appropriation for the special expenses of this mission. But this does not include such payments out of the general fund for the contingent expenses of all the missions abroad as are usually made in the case of other missions. The President directs that you be allowed an outfit of nine thousand dollars, and a salary of nine thousand dollars. In missions to Europe, the government allows for the expenses of the minister's return a sum equal to one quarter's salary. Considering the distance from the United States at which diplomatic services are performed in Asia, it has been thought reasonable to allow in missions in that quarter of the world the minister's expenses in returning at the rate of half a year's salary. This has been done in previous cases. The return allowance is usually made out of the fund for the contingent expenses of the missions abroad; and, in case no sufficient surplus should remain of the fund specially appropriated by Congress after the necessary expenditures in China, you are authorized to draw on this department for your return allowance, as above stated. The secretary of the mission, Mr. Fletcher Webster, already appointed, will be allowed a salary at the rate of four thousand five hundred dollars a year. An advance has been made to him, partly toward his own compensation, and partly to enable him to make some necessary preparations for the objects of the mission, as you will see by his instructions, a copy of which you will herewith receive. The necessary traveling expenses of yourself and suite from place to place while in China, when you can not be conveniently conveyed by the squadron, will be allowed. Your salary will commence from the date of your commission, if you proceed on your mission within ninety days from that time. It is difficult to give you any rule respecting contingencies in a service so new, and in a country so remote. It may be neces-

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sary, or, at least, highly useful, that a draughtsman should accompany you, and also some young gentleman in the character of physician. It is desired that you make such inquiries as may show whether the services of such persons can be obtained at small expense.

A number of young gentlemen have applied to be unpaid attachés to the mission. It will add dignity and importance to the occasion, if your suite could be made respectable in number, by accepting such offers of attendance without expense to the government.

Of course, you will need the service of one or more interpreters. These you may engage either in Europe or in China, or wherever, in your own judgment, you can find persons most competent. The squadron destined for service in the Asiatic seas, and which, it is understood, will carry you out to China, will consist of the frigate Brandywine, sloop of war St. Louis, and the steam-frigate Missouri. These vessels will be ready to proceed immediately from Norfolk, and will have instructions to take up the mission at Bombay.

The Secretary of the Navy will give the proper directions for the accommodation on board the vessels of such gentlemen attached to the mission as may be ready to go with the squadron.

The Navy Department will also cause proper instructions to be given to Commodore Parker, commanding the squadron, for carrying into effect the objects of government in this important mission.

In another paper of this date you will receive further instructions respecting the great political objects of the mission, and the means supposed to be most likely to accomplish them.

I am, sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

CALEB CUSHING, Esq., *appointed Commissioner of the United States to China.*

The President's Letter to the Emperor.

I, John Tyler, President of the United States of America—which states are: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, Vermont, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Kentucky, Tennessee, Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, and Michigan—send you this letter of peace and friendship, signed by my own hand.

I hope your health is good. China is a great empire, extending over a great part of the world. The Chinese are numerous. You have millions and millions of subjects. The twenty-six United States are as large as China, though our people are not so numerous. The rising sun looks upon the

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great mountains and great rivers of China. When he sets, he looks upon rivers and mountains equally large in the United States. Our territories extend from one great ocean to the other; and on the west we are divided from your dominions only by the sea. Leaving the mouth of one of our great rivers, and going constantly toward the setting sun, we sail to Japan and to the Yellow Sea.

Now my words are, that the governments of two such great countries should be at peace. It is proper, and according to the will of Heaven, that they should respect each other, and act wisely. I, therefore, send to your court Caleb Cushing, one of the wise and learned men of this country. On his first arrival in China, he will inquire for your health. He has then strict orders to go to your great city of Pekin, and there to deliver this letter. He will have with him secretaries and interpreters.

The Chinese love to trade with our people, and to sell them tea and silk, for which our people pay silver, and sometimes other articles. But if the Chinese and the Americans will trade, there should be rules, so that they shall not break your laws nor our laws. Our minister, Caleb Cushing, is authorized to make a treaty to regulate trade. Let it be just. Let there be no unfair advantage on either side. Let the people trade not only at Canton, but also at Amoy, Ning-po, Shang-hai, Fuchow, and all such other places as may offer profitable exchanges both to China and the United States, provided they do not break your laws nor our laws. We shall not take the part of evil-doers. We shall not uphold them that break your laws. Therefore, we doubt not that you will be pleased that our messenger of peace, with this letter in his hand, shall come to Pekin, and there deliver it; and that your great officers will, by your order, make a treaty with him to regulate affairs of trade, so that nothing may happen to disturb the peace between China and America. Let the treaty be signed by your own imperial hand. It shall be signed by mine, by the authority of our great council, the Senate.

And so may your health be good, and may peace reign.

Written at Washington, this twelfth day of July, in the year of our Lord one thousand eight hundred and forty-three.

Your good friend, JOHN TYLER.

By the President:

A. P. UPSHUR, *Secretary of State.*

This letter is dated July 12, and countersigned by Mr. Upshur, Mr. Webster having then left the department. But it was written by Mr. Webster, and the original is now on file, in the Department of State, in his hand-writing.

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The President's Letter to the Emperor.

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GREAT AND GOOD FRIEND,—I have made choice of Caleb Cushing, one of our distinguished citizens, to reside near your majesty in the quality of envoy extraordinary and minister plenipotentiary of the United States of America. He is well informed of the relative interests of the two countries, and our sincere desire to cultivate friendship and good correspondence between us; and, from a knowledge of his fidelity and good conduct, I have entire confidence that he will render himself acceptable to your majesty, by his constant endeavors to preserve and advance the interests and happiness of both nations. I therefore request your majesty to receive him favorably, and to give full credence to whatever he shall say on the part of the United States, and most of all when he shall assure you of their friendship and wishes for your prosperity. And I pray God to have you in His safe and holy keeping.

Written at the city of Washington, the twelfth day of July, in the year of our Lord one thousand eight hundred and forty-three. Your good friend, JOHN TYLER.

By the President:

A. P. UPSHUR, *Secretary of State.*

Messrs. Richards and Haalilio to the Secretary of State.

WASHINGTON, *December* 14, 1842.

SIR,—The undersigned having been duly commissioned by his majesty, Kamehameha III., king of all the Hawaiian Islands, to represent his government, and promote its interests in the United States, wish to call the attention of your government to the existing relations between the two countries.

In the year 1826 articles of agreement, in the form of a treaty, were entered into between his majesty's government and Thomas Ap Catesby Jones, commanding the United States sloop-of-war Peacock. His majesty has never received any notice of that treaty's being ratified, nor intimation that it was approved by the government of the United States. His majesty has, nevertheless, during the last sixteen years governed himself by the regulations of that treaty, in all his intercourse with citizens of the United States.

Subsequently to the above, similar forms of agreement have been entered into between his majesty and officers commanding vessels of war of different nations of Europe; but, so far as is known to the undersigned, those agreements have never received the sanction of their several governments.

These facts, viewed in connection with their attendant circumstances, have led his majesty to feel considerable embarrassment in managing his foreign relations, and has awakened

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the very strong desire that his kingdom should be *formally* acknowledged by the civilized nations of the world as a sovereign and independent state.

His majesty considers that this acknowledgment has already been tacitly but virtually made, both in the United States and Europe, by the appointment of consuls and commercial agents to reside in his dominions, and by the formal manner in which the commanders of national vessels have transacted business with him, many of whom have professedly acted under the express instructions of their several governments. But he is nevertheless of opinion that the time has now arrived when both the interest and the honor of his kingdom demand a more formal acknowledgment than has hitherto been made by any foreign government. It is his majesty's request that the government of the United States will take into consideration the nature, the extent, and the rapidity of those changes which have taken place in his dominions during the last few years; changes which he has the happiness to believe are honorable, both to his government and to the people over whom it rules.

Twenty-three years ago the nation had no written language, and no character in which to write it. The language had never been systematized nor reduced to any kind of form. The people had no acquaintance with Christianity, nor with the valuable institutions or usages of civilized life. The nation had no fixed form or regulations of government, except as they were dictated by those who were in authority, or might by any means acquire power. The right of property was not acknowledged, and was therefore but partially enjoyed; there were no courts of justice, and the will of the chieftains was absolute. The property of foreigners had no protection, except in the kind disposition of individuals. But, under the fostering influence, patronage, and care of his majesty, and that of his predecessors, the language has been reduced to visible and systematized form, and is now written by a large and respectable proportion of the people. Schools have been established throughout his dominions, and are supported principally by the government; and there are but few, among the younger people, who are unable to read. They have now, in their own language, a library embracing a considerable variety of books, on a variety of subjects, including the Holy Scriptures, works on natural history, civil history, church history, geography, political economy, mathematics, and statute law; besides a number of elementary books. A regular monarchical government has been organized, of a limited and representative character, a translation of the Constitution of which we herewith transmit. A code of laws, both civil and criminal, has been enacted and published.

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The Legislature holds an annual meeting for the purpose of adding to and amending this code. Courts of justice have been established, and regular trials by jury required in all important cases. Foreigners of different nations have testified their confidence in these courts, by bringing suits in cases where many thousands of dollars worth of property was involved, and that, too, in cases when, with but very short delay, they could have been carried before the courts of other countries.

It has, moreover, been the uniform practice of consuls and commercial agents, resident in his majesty's dominions, and also of all commanders of national vessels visiting those dominions, to demand all that protection, both of person and property, which is demanded of sovereign and independent states; and this his majesty believes has been duly and efficiently extended. While, therefore, all is demanded of his government, and all is rendered by it, which is demanded of or rendered by the governments of sovereign and independent states, he feels that he has a right to expect his state to be acknowledged as such, and thus be formally received into the general compact of sovereign nations. In the request which his majesty hereby makes to the government of the United States, he has, of course, for his direct object the promotion of the interest of his own kingdom; but he is also very fully convinced that the important interests of all the great commercial nations will also be materially subserved by his dominions remaining, as they have hitherto been, independent.

Their position is such that they constitute the great center of the whale fishery for most of the world. They are on the principal line of communication between the western continent of America and the eastern continent of Asia; and such are the prevailing winds on that ocean, that all vessels requiring repairs or supplies, either of provisions or of water, naturally touch at those islands, whether the vessels sail from Columbia River on the north, or from the far-distant ports of Mexico, Central America, or Peru upon the south; and it should be further added, that there is no other place in all that part of the Pacific Ocean where repairs of vessels can be made to so good an advantage, or supplies be obtained in such abundance, and on so favorable terms.

His majesty wishes, also, to remind the government of the United States, that the amount of property belonging to their citizens, which is either landed at, or enters the various harbors and roadsteads of his dominions, and is consequently more or less dependent on the protection of his government, can not be less than from five to seven millions of dollars annually. This property lies in some ninety or a hundred whaling ships and their cargoes, and in some twelve or fifteen merchant vessels,

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besides, also, a considerable amount of other property belonging to American citizens on shore. At some seasons there have been not less than three or four millions of dollars worth of American property, and some fourteen hundred American citizens, at the same time at the various parts of the island, requiring consequently, in some degree, the protection of his majesty; and he has the happiness of believing that efficient and satisfactory aid has always been extended to those who have required it. In evidence corroborative of many of the facts herein stated, the undersigned do not hesitate to refer to documentary evidence, which they believe must be among the papers in your Department of State, recently furnished by masters of national vessels, but more especially by the United States commercial agent residing at Honolulu.

His majesty is also desirous that there should be a definite arrangement for the settlement of any future difficulties which may unhappily arise, and which, between sovereign and independent nations, would ordinarily be the subject of diplomatic correspondence. To carry into effect these desirable objects, the undersigned are authorized by his majesty, Kamehameha III., to enter into negotiation with the authorities of the United States, by convention, treaty, or otherwise, whenever the latter shall acknowledge the sovereignty of the former; and, as evidence that the undersigned are thus authorized, they are prepared to present official papers from his majesty, whenever the way is open for them to be received.

The undersigned will further state, that they are directed to proceed from the United States to Europe, for the purpose of obtaining from some of the principal governments there the same acknowledgments which it is the object of this letter to obtain from the government of the United States.

Accept, sir, the assurances of the high consideration with which the undersigned have the honor to be your obedient servants,

TIMOTEO HAALILIO,
WILLIAM RICHARDS.

Hon. DANIEL WEBSTER, *Secretary of State.*

The Secretary of State to the Agents of the Sandwich Islands.

DEPARTMENT OF STATE, *Washington, December* 19, 1842.

GENTLEMEN,—I have received the letter which you did me the honor to address to me, under date of the 14th instant, stating that you had been commissioned to represent, in the United States, the government of the Hawaiian Islands, inviting the attention of this government to the relations between the two countries, and intimating a desire for a recognition of the Hawaiian government by that of the United States.

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Your communication has been laid before the President, and by him considered.

The advantages of your country to navigators in the Pacific, and in particular to the numerous vessels and vast tonnage of the United States frequenting that sea, are fully estimated; and just acknowledgments are due to the government and inhabitants of the islands for their numerous acts of hospitality to the citizens of the United States.

The United States have regarded the existing authorities in the Sandwich Islands as a government suited to the condition of the people, and resting on their own choice; and the President is of opinion that the interests of all commercial nations require that that government should not be interfered with by foreign powers. Of the vessels which visit the islands, it is known that a great majority belongs to the United States. The United States, therefore, are more interested in the fate of the islands, and of their government, than any other nation can be; and this consideration induces the President to be quite willing to declare, as the sense of the government of the United States, that the government of the Sandwich Islands ought to be respected; that no power ought either to take possession of the islands as a conquest, or for the purpose of colonization; and that no power ought to seek for any undue control over the existing government, or any exclusive privileges or preferences with it in matters of commerce.

Entertaining these sentiments, the President does not see any present necessity for the negotiation of a formal treaty, or the appointment or reception of diplomatic characters. A consul, or agent, from this government will continue to reside in the islands. He will receive particular instructions to pay just and careful attention to any claims or complaints which may be brought against the government or people of the islands by citizens of the United States, and he will also be instructed to receive any complaint which may be made by that government, for acts of individuals (citizens of the United States), on account of which the interference of this government may be requested, and to transmit such complaint to this department.

It is not improbable that this correspondence may be made the subject of a communication to Congress; and it will be officially made known to the governments of the principal commercial powers of Europe.

I have the honor to be, gentlemen, your obedient servant,

DANIEL WEBSTER.

Messrs. TIMOTEO HAALILIO and WILLIAM RICHARDS, *Washington.*

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CONSTRUCTION OF THE TREATY BETWEEN THE UNITED STATES AND PORTUGAL, RESPECTING DUTIES AT THE CUSTOM HOUSE.

Mr. Figanierè e Morao to Mr. Webster.—[COPY.]

PHILADELPHIA, *November* 18, 1841.

THE undersigned, a member of her majesty's council, and minister resident of Portugal in the United States of America, by direction of his government, has the honor to address himself to the Honorable Daniel Webster, Secretary of State of the United States, in order to lay before him, for the consideration of the American government, and its consequent action at the next session of the legislative body of the Union, the following observations respecting the bill concerning duties and drawbacks, reported to the House of Representatives at the late session of Congress.

The attention of her majesty's government was called to the bill in question in consequence of its purporting to lay aside the principle heretofore and for a long period followed in the United States, of imposing specific duties on wines and spirituous liquors, on their introduction into this country, and substituting an ad valorem duty, which could not be viewed with indifference by the government of Portugal, inasmuch as the proposed change, which has since been effected by the subsequent passage of said bill in both Houses, and its approval by the President on the 11th of September last, is certainly highly detrimental to the consumption of Portuguese wines in this country, and consequently prejudicial to the commercial intercourse of the two nations, which has so shortly ago, and with reciprocal satisfaction, been fixed upon a liberal basis in the treaty signed at Lisbon on the 26th of August, 1840.

When that treaty was under negotiation, and at its termination, the duties on wines (the principal export of Portugal) were then, and continued to be, specifically levied in the United States; nor was it at that time intended, to the knowledge of the queen's government, that the system then followed would so soon and unexpectedly be changed, to the great injury of the Portuguese staple. Moreover, it is argued, the operation of the act in question infringes, if not the letter, the spirit of the said treaty, which violation was surely never contemplated by either the legislative or executive branch of the United States government. Nevertheless, the fact appears evident, when it is taken into consideration that the wines of Portugal, from their nature, and peculiar, unavoidable circumstances,

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can only reach this country at a comparatively higher cost than the wines of other countries, and of course be subjected to a higher duty, according to the act of Congress, than the like wines of those other countries, and consequently contrary to the provision of the 3d article of the treaty of 1840, which would not be the case if the duty were specific, as before the passage of the act.

In order to show the different effects of the two modes of imposing duties on wines, the undersigned begs to call Mr. Webster's attention to the following illustration of them. A pipe of wine from the Mediterranean, Spain, or any other country, reaches a port in the United States at a cost (let it be supposed) of 30 cents the gallon, and a like pipe of wine from Portugal costing say 38 cents the gallon. If the duty be specific (for instance, 15 cents), they will both be subjected to the same, and neither pay a higher or other duty than the other; for fifteen cents per gallon, and no more, would be levied upon both pipes. Not so, however, according to the act of the 11th of September last, which imposes twenty per cent. ad valorem. The Spanish or other wine will pay only six cents per gallon, while from the like wine of Portugal will be exacted $7\frac{6}{10}$ cents per gallon, which, *de facto*, operates as a discriminating duty against the Portuguese wines, contrary to the stipulations of the treaty between the two countries.

The undersigned will not, on this occasion, multiply arguments to prove the injurious effect the act referred to will have upon the wines of his country, and upon its commerce generally with the United States, should the present mode of levying the duties upon wines and spirituous liquors be continued. He flatters himself that the plain statement now offered, together with the verbal observations he very lately had the honor to submit to Mr. Webster upon the same subject, will convince him of the fitness of the alteration proposed, in order that the treaty referred to be not virtually rendered void, but available, as the two governments intend, for the benefit both of Portugal and the United States.

The minister of Portugal avails himself of this opportunity to reiterate to the honorable Secretary of State the assurance of his distinguished consideration and esteem.

DE FIGANIERE E MORAO.

Hon. DANIEL WEBSTER, *Secretary of State of the United States.*

Mr. Webster to Mr. Figanierè e Morao.

DEPARTMENT OF STATE, *Washington, February* 9, 1842.

The undersigned, Secretary of State of the United States, has the honor to acknowledge Mr. De Figanierè e Morao's note of the 18th of November, and has given to it the consid-

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eration due to its importance, and to the friendly relations happily subsisting between the two governments.

The undersigned regrets that the government of Portugal should suppose that it has reason to complain, in any manner, of a law of the United States as being prejudicial to Portugal, or at variance with the amity and good-will subsisting between the two countries, and especially as inconsistent with the treaty obligations of the United States.

The law complained of was enacted on the 11th day of September, 1841; and its main provision was, to lay a duty of 20 per cent. ad valorem on all such articles as were at that time free, or on which the duty was less than that rate, with certain exceptions. The wines of Portugal not being within the exceptions, and being subject at that time only to a specific duty, may fall under an increased charge or duty by the operation of this law.

The third article of the treaty subsisting between the United States and Portugal is in these words:

"No higher or other duties shall be imposed on the importation into the kingdom and possessions of Portugal of any article, the growth, produce, or manufacture of the United States of America; and no higher or other duties shall be imposed on the importation into the United States of America of any article, the growth, produce, or manufacture of the kingdom and possessions of Portugal, than such as are or shall be payable on the like article, being the growth, produce, or manufacture of any other foreign country.

"Nor shall any prohibition be imposed on the importation or exportation of any article, the growth, produce, or manufacture of the United States of America, or of the kingdom and possessions of Portugal, to or from the ports of the said kingdom and possessions of Portugal, or of the said States, which shall not equally extend to all other foreign nations.

"Nor shall any higher or other duties or charges be imposed, in either of the two countries, on the exportation of any articles to the United States of America or to the kingdom of Portugal, respectively, than such as are payable on the exportation of the like articles to any other foreign country.

"Provided, however, that nothing contained in this article shall be understood or intended to interfere with the stipulation entered into by the United States of America, for a special equivalent, in regard to French wines, in the convention made by the said States and France on the fourth day of July, in the year of our Lord one thousand eight hundred and thirty-one, which stipulation will expire and cease to have effect in the month of February, in the year of our Lord one thousand eight hundred and forty-two."

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Mr. De Figanierè e Morao thinks that the provision of this article is interfered with by the above-mentioned act of Congress. He illustrates his own view of the subject by putting a case in the following form:

"A pipe of wine from the Mediterranean, or Spain, or any other country, reaches a port in the United States at a cost (let it be supposed) of 30 cents the gallon, and a like pipe of wine from Portugal costing 38 cents per gallon. If the duty be specific, say 15 cents, they will both be subject to the same, and neither pay a higher or other duty than the other; for fifteen cents per gallon, and no more, would be levied on both pipes. Not so, however, according to the act of the 11th of September last, which imposes 20 per cent. ad valorem. The Spanish or other wine will pay only six cents per gallon, while from the like wine of Portugal will be exacted $7\frac{6}{10}$ cents per gallon, which, *de facto*, operates as a discriminating duty against the Portuguese wine, contrary to the stipulations of the treaty between the two countries."

Before proceeding to consider the argument and illustration thus advanced, the undersigned avails himself of the opportunity of stating to Mr. De Figanierè e Morao, that the language in the third article of the treaty between the United States and his government is of the same import with that used in most other treaties of the United States with foreign powers, and identical with that employed in some of them; and that no complaint has ever been made to this government by the governments with whom such treaties have existed of any injury, injustice, or want of strict compliance with treaty stipulations on any such ground as has been now taken by the Portuguese government. It will be at once obvious, therefore, to Mr. De Figanierè e Morao that the government of the United States must take such a view of the question as it can maintain not only in regard to Portugal, but many other powers also.

The interdict of the treaty is,

"No higher or other duties shall be imposed on the importation into the United States of America, of any article, the growth, produce, or manufacture of the kingdom and possessions of Portugal, than such as are or shall be payable on the like article, being the growth, produce, or manufacture of any other foreign country."

The article on which the duty complained of is laid is wine; and the duty laid on Portuguese wine is exactly the same, in terms, as that laid on the like article (except as excepted in the law) coming from other countries. In other words, all wines fall under the same duty of 20 per cent. *ad valorem*. In terms, therefore, the law is clearly within the treaty.

But Mr. De Figanierè e Morao thinks it not in conformity

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with the spirit and intent of the treaty, because, under its operation, a gallon of wine in Portugal may cost more than a gallon of wine in Spain, and, therefore, 20 per cent. on the cost of the gallon of Portuguese wine will be more than 20 per cent. on that of the Spanish wine; and, consequently, a gallon of Portuguese wine will pay a higher duty than a gallon of Spanish wine. That this may be the result of the operation of the law can not be denied; and this makes it necessary to inquire, what is the true interpretation of this third article of the treaty?

There may sometimes be difficulty, without doubt, in deciding on the just extent of such a provision, and in applying it, in the legislation of states bound to regard it; because, in general, articles identically the same, or in the language of the treaty alike, are seldom imported from different countries. Yet the provision itself is to be observed, and is to receive a reasonable and just construction. This is the leading rule of interpretation in regard to all treaties and other important compacts. Now it is evident, that if Mr. De Figaniere e Morao's idea be correct, the government of the United States could impose no *ad valorem duty* whatever, because, as articles bearing the same general name, and imported from different countries, would, of course, be of different degrees of value and cost, the country producing those of highest value would always have cause of complaint, if subjected to an *ad valorem* duty. The result would be, that the government of the United States could not exercise its powers at all, in one of the most ordinary modes of taxation. As this consequence would be unreasonable, and evidently not within the contemplation of the parties, the reasoning which would conduct us to it must be rejected.

We are to consider, then, what is the just meaning of the terms "other or higher duties," and to inquire by what standard it is to be known and ascertained whether duties "other and higher" are laid in a given case. Now, to accomplish this, resort must be had to some measure of comparison, simple or mixed; some rule by which the question is to be decided. What is that rule? What is the standard of comparison? Is some one single consideration to fix that standard, or may reference be had to various considerations? Mr. De Figaniere e Morao's idea is, that the only element of calculation, the only datum to be taken into view, is the quantity of the article; that is to say, he is of opinion that if one gallon pays more duty than another gallon, the duty is, for that reason alone, higher, in the sense of the treaty. But the undersigned thinks, with all respect, that this may well be questioned; he thinks cost and value may be regarded as forming parts of the basis of calcu-

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lation and comparison, as well as quantity. It is as reasonable, as seems to him, to understand the treaty as saying that merchandise from Portugal shall pay no higher duties than similar merchandise from other countries, according *to its value*, as it is to understand it as saying that it shall pay no higher duties in proportion to its quantity. Cost and value are as reasonable a basis as mere measure, weight, or quantity, in deciding on the comparison of duties. Indeed, it appears to the undersigned that ad valorem duties are likely to be the most unexceptionable of all forms of imposts, so far as stipulations in treaties, like that now under consideration, are concerned. When duties are made specific, they are laid on different classes of the same general article at different rates, according to their respective degrees of cost or value. Cheap wines are not taxed so high as dearer wines; nor can it be considered as any purpose of the treaty to abolish such distinctions; so that cost and value ordinarily constitute either the whole or part of the ground upon which rates of duties are fixed. In the case stated by Mr. De Figanierè e Morao, the Portuguese wine is assumed as the more costly article. But we may well suppose an opposite case, and a case of specific duties of exactly the same nominal amount, and yet a case in which, as it appears to the undersigned, Portugal might complain with far greater appearance of reason than she now complains of the law of September. There are wines of Portugal, of large consumption, which cost much less than certain wines of France. Let us suppose that a wine of Lisbon cost 50 cents a gallon, and a wine of Bordeaux one dollar, and that each was taxed equally one dollar a gallon in the ports of the United States. Here would be an apparent equality, just such as Mr. De Figanierè e Morao now thinks ought to exist. But would there be real equality? Might not the Portuguese producer say that he did not enjoy, substantially, the same advantage as his French competitor, inasmuch as his capital and labor, producing an article in greater quantity, but of lower price, were really subjected to a burden twice as great as that which fell on the labor and capital of the French producer? Might he not say, suffer my product, according to its cost and value, to be received into the country upon the same terms, and not other or higher, as the products of other countries? The stipulation contained in the third article of the treaty between the United States and Portugal, and in other treaties to which the United States are parties, is just and liberal, and ought to be observed to the fullest practicable extent; but perhaps it may be found that it is necessarily circumscribed within certain limits, and subjected to qualifications. And this results from the fact that, in a commercial sense, and according to the

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common understanding of men, the generic word "article" is subdivisible, and its subdivisions are as well known, and are regarded in as independent and substantive a sense as the generic term itself.

Wine is an article of commerce; but the wine of Oporto, wine of Bordeaux, wine of Madeira, wine of Sicily, are separate articles; so regarded in transactions of commerce, so regarded in the duty laws of various governments, and especially in those of the United States.

It would, therefore, not be considered as any infraction of the treaty with Portugal, if Oporto wines were subjected to one duty and Sicily wines to another, since they are, in commercial understanding, different articles. And it may be added, that difference in cost or value may, in many cases, very materially contribute to settle the question of identity or difference between two articles; that is to say, in deciding whether two articles are the same, or alike, as the phrase of the treaty is, reference to the cost of each may be very pertinent and important. For example, the teas of China have heretofore been subject to different rates of duties in the United States as separate articles, under separate and specific denominations, as Bohea, Congo, Hyson, &c. Now in a disputed case, whether a particular article of that general kind belonged to one or the other of these classes, would be an inquiry, in the prosecution of which one important element of proof and ground of decision would naturally be the cost of the article, the more especially if the classes bore a considerable resemblance to each other, as is the case with some of them. So, if articles bearing the same general name come from different countries, whether they ought to be regarded as the same article, is a question for the solution of which one may look not only to the name, but to their cost and value. And this consideration appears to the undersigned to show, he presumes to say, almost conclusively, that if the duty in a given case be *ad valorem*, it is, of all forms of laying duties, that which is most strictly in accordance with the provisions of treaties, such as that between the United States and Portugal.

The article of the treaty under consideration was designed as a stipulation that no unfriendly legislation should be resorted to by one party against the other, nor any preference given to the products of other countries, with intent to injure or prejudice either party to the treaty. The treaty enjoins the spirit and practice of fair and equal legislation; but neither party supposed itself precluded by its stipulations from the ordinary modes of exercising its own power of making law for raising revenue in its accustomed modes; and if it happen, in any case, that, from the operation of laws thus laid with fair intent

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and for necessary purposes, inconveniences result to either party, that result must be considered as not intended, but as arising from the nature of the case itself, and therefore as unavoidable.

These are the general views which have presented themselves to the undersigned in answer to Mr. De Figaniere e Morao's note, and he trusts that the government of Portugal will consider them as satisfactory. Portugal is one of the countries with which the United States, in taking their place in the circle of nations, had early friendly commercial and diplomatic intercourse. Happily, nothing has occurred permanently to disturb that intercourse. The two countries have no rivalries, no opposition of interests, no grounds of mutual distrust; and the undersigned avails himself of this opportunity to express his earnest hope, that the harmony now insured by the stipulations of a fair and equal treaty may long continue, and to signify, at the same time, the high consideration with which he has the honor to regard Mr. De Figaniere e Morao.

DANIEL WEBSTER.

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SOUND DUES AT ELSINORE, AND THE ZOLL VEREIN UNION.

Extract from the President's Message, June 1, 1841.

The Secretary of State has addressed to me a paper upon two subjects, interesting to the commerce of the country, which will receive my consideration, and which I have the honor to communicate to Congress.

Mr. Webster to the President of the United States.

Department of State, *Washington, May 24, 1841.*

Sir,—There are two subjects connected with the foreign commerce of the United States to which the Secretary of State considers it to be his duty to call the attention of the President at the earliest opportunity.

The first is, the collection of Sound dues, or the tax payable at Elsinore, laid by the Danish government upon the cargoes of vessels passing through the Sound, into and out from the Baltic Sea.

The right of Denmark to levy these dues is asserted on the ground of ancient usage, coming down from the period when that power had possession of both shores of the Belt and Sound. However questionable the right or uncertain its origin, it has been recognized by European governments in several treaties with Denmark, some of them entered into at as early a period as the fourteenth century; and inasmuch as our treaty with that power contains a clause putting us on the same footing, in this respect, as other the most favored nations, it has been acquiesced in, or, rather, has not been denied, by us.

The treaty of 1645, between Denmark and Holland, to which a tariff of the principal articles then known in commerce, with a rule of measurement and a fixed rate of duty, was appended, together with the subsequent one between the same parties in 1701, amendatory and explanatory of the former, has been generally considered as the basis of all subsequent treaties, and among them of our own, concluded in 1826, and limited to continue ten years from its date, and further until the end of one year after notice by either party of an intention to terminate it, and which is still in force.

Treaties have also been concluded with Denmark by Great Britain, France, Spain, Portugal, Russia, Prussia, and Brazil, by which, with one or two exceptions in their favor, they are placed on the same footing as the United States.

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There has recently been a general movement, on the part of the northern powers of Europe, with regard to the subject of these Sound dues, which seems to afford to this government a favorable opportunity, in conjunction with them, for exerting itself to obtain some such alteration or modification of existing regulations as shall conduce to the freedom and extension of our commerce, or, at least, toward relieving it from some of the burdens now imposed, which, owing to the nature of our trade, operate, in many instances, very unequally and unjustly on it in comparison with that of other nations.

The ancient tariff of 1645, by which the payment of these dues was regulated, has never been revised, and by means of the various changes which have taken place in commerce since that period, and of the alteration in price in many articles therein included, chiefly in consequence of the settlement of America, and the introduction of her products into general commerce, it has become quite inapplicable.

It is presumed to have been the intention of the framers of that tariff to fix a duty of about one per centum ad valorem upon the articles therein enumerated; but the change in value of many of those commodities, and the absence of any corresponding change in the duty, has, in many instances, increased the ad valorem from one per centum to three, four, and even seven; and this, generally, upon those articles which form the chief exports of the United States, of South America, and the West India Islands: such as the articles of cotton, rice, raw sugar, tobacco, rum, Campeachy wood, &c.

On all articles not enumerated in this ancient tariff it is stipulated, by the treaty of 1701, that the "privileged nations," or those who have treaties with Denmark, shall pay an ad valorem of one per cent.; but the value of these articles being fixed by some rules known only to the Danish government, or at least unknown to us, this duty appears uncertain and fluctuating, and its estimate is very much left to the arbitrary discretion of the custom-house officers at Elsinore.

It has been, by some of the public writers in Denmark, contended that goods of privileged nations, carried in the vessels of unprivileged nations, should not be entitled to the limitation of one per centum ad valorem, but should be taxed one and a quarter per centum, the amount levied on the goods of unprivileged nations; and, also, that this limitation should be confined to the direct trade; so that vessels coming from or bound to the ports of a nation not in treaty with Denmark should pay on their cargoes the additional quarter per cent.

These questions, although the former is not of so much consequence to us, who are our own carriers, are still, in connection with each other, of sufficient importance to render a

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decision upon them, and a final understanding, extremely desirable.

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These Sound dues are, moreover, in addition to the port charges of light money, pass money, &c., which are quite equal to the rates charged at other places, and the payment of which, together with the Sound dues, often causes to vessels considerable delay at Elsinore.

The port charges, which are usual among all nations to whose ports vessels resort, are unobjectionable, except that, in this case, they are mere consequences of the imposition of the Sound dues, following, necessarily, upon the compulsory delay at Elsinore of vessels bound up and down the Sound with cargoes, with no intention of making any importation into any port of Denmark, and having no other occasion for delay at Elsinore than that which arises from the necessity of paying the Sound dues, and, in so doing, involuntarily subjecting themselves to these other demands.

These port duties would appear to have some reason in them, because of the equivalent; while, in fact, they are made requisite, with the exception, perhaps, of the expense of lights, by the delay necessary for the payment of the Sound dues.

The amount of our commerce with Denmark, direct, is inconsiderable, compared with that of our transactions with Russia, Sweden, and the ports of Prussia, and the Germanic Association on the Baltic; but the sum annually paid to that government in Sound dues, and the consequent port charges, by our vessels alone, is estimated at something over one hundred thousand dollars.

The greater proportion of this amount is paid by the articles of cotton, sugar, tobacco, and rice; the first and last of these paying a duty of about three per cent. ad valorem, reckoning their value at the places whence they come.

By a list published at Elsinore in 1840, it appears that between April and November of that year seventy-two American vessels, comparatively a small number, lowered their topsails before the Castle of Cronberg. These were all bound up the Sound to ports on the Baltic, with cargoes composed, in part, of the above-named products, upon which alone, according to the tariff, was paid a sum exceeding forty thousand dollars for these dues.

Having disposed of these cargoes, they returned laden with the usual productions of the countries on the Baltic, on which, in like manner, were paid duties on going out through the Sound, again acknowledging the tribute by an inconvenient and sometimes hazardous ceremony.

The whole amount thus paid within a period of eight months on inward and outward bound cargoes, by vessels of the United

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States, none of which were bound for, or intended to stop at any port in Denmark, except compulsorily at Elsinore, for the purpose of complying with these exactions, must have exceeded the large sum above named.

I have, therefore, thought proper to bring this subject before you at this time, and to go into these general statements in relation to it, which might be carried more into detail, and substantiated by documents now in the department, to the end that, if you should deem it expedient, instructions may be given to the representative of the United States at Denmark, to enter into friendly negotiations with that government, with a view of securing to the commerce of the United States a full participation in any reduction of these duties, or the benefits resulting from any new arrangements respecting them, which may be granted to the commerce of other states.

The other subject which, in the opinion of the Secretary, demands the early consideration of the government, is the Germanic Association, or Customs Union, established in Germany, and now in successful operation under the leading auspices of the government of Prussia. This important association has for its objects the union of many of the German states into one body, for the purpose of establishing uniform regulations of commerce; uniform duties of importation, exportation, and transit; a system of uniform weights and measures, and a uniform coinage throughout all the members of the association; objects resembling, as will be perceived, important purposes contemplated by the establishment of the general government of the United States.

In all the states of the association the greatest variety and diversity had previously existed. Each had its own circle of custom-houses, and its peculiar system of duties, constituting them in these respects foreign countries to one another. The effect of these diversities upon trade and manufactures may easily be supposed to have been highly prejudicial to the general commerce of the country.

To Prussia, who had labored for years to bring about this commercial revolution in Germany, chiefly belongs the credit of its accomplishment. She has united the members of the confederation in a treaty which establishes one tariff for all, the duties to be collected on the frontiers of what now forms one great commercial league. The net revenues arising from the duties are divided among the several states in proportion to their respective amounts of population, every article, salt and playing-cards excepted, having once paid the duties on the frontier, being permitted to circulate freely among all the states of the Union without any additional impost.

The treaty was concluded in 1834, and was to continue in

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force until the 1st of January, 1842; and if, during that term, and at latest two years before its expiration, the contrary should not be declared, for twelve years more; and afterward, from twelve years to twelve years; it has recently, under these provisions, been renewed for another term of twelve years. The effect of this confederation has probably been to give to Prussia and Germany a new weight in the political balance of Europe; but it is principally interesting to the United States in its commercial tendencies, and in the hopes which it encourages of furnishing an enlarged consumption of some of the staple articles of our production, such as cotton, tobacco, and rice. The German Commercial and Customs Association comprises an ample territory, abounding in wealth, industry, population, and resources of every description. The states included in it are,

States.	Population.
The kingdom of Prussia	14,271,530
The kingdom of Bavaria	4,315,469
The kingdom of Würtemberg	1,649,839
The kingdom of Saxony	1,652,114
The Grand Duchy of Baden	1,277,403
Electorate of Hesse	704,700
Grand Duchy of Hesse (with Homburg)	807,671
Duchy of Nassau	386,221
The Thuringian Union	908,478
Free city of Frankfort on the Maine	54,000
Total	26,027,425

It is understood that Brunswick has exhibited an inclination to separate from the Northwestern Union, of which she is now a member, and to join the association; and the accession of the Grand Duchy of Luxemburg is likely soon to swell still higher the total population of the states thus united, which constitutes already the most industrious, enlightened, and prosperous people of Germany.

Three of the German states have not yet acceded to the association, but have formed a separate Commercial and Customs Union, viz.:

States.	Population.
The kingdom of Hanover	1,772,107
The Grand Duchy of Oldenburg	266,536
The Duchy of Brunswick	251,000
Total	2,289,643

And a few of the states of Germany have neither acceded to the association, nor formed any special union among themselves; these are,

States.	Population.
The Duchies of Holstein and Lunenburg (belonging to the King of Denmark)	471,276
The Grand Duchy of Mecklenburg Schwerin	482,925
The Grand Duchy of Mecklenburg Strelitz	89,528
The Hanseatic cities of Lübeck, Hamburg, and Bremen	245,500
Total	1,289,229

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In the accomplishment of her great political object, Prussia has been compelled to make considerable pecuniary sacrifices, her revenues from the customs being less than before the formation of the association; though this falling off has been gradually lessening, owing to the increased population and prosperity of the kingdom. The attempts made to adjust and compensate this loss have not been successful; but it is believed that the difficulty will be removed by allowing Prussia to levy, for her own exclusive benefit, the transit duties on cotton and other commodities without any material change in the general system.

The net revenues of the association have increased from about 12,000,000 thalers, collected in 1834, the year of its first establishment, to upward of 20,000,000, the present amount, exclusive of the expense of collection, amounting to 12½ per cent.; a prodigious increase, and mainly owing to the rapidly-increasing prosperity, and, consequently, augmented consumption of the German states associated in the League.

With Hanover, the United States has recently concluded a treaty of commerce and navigation, through the agency of Mr. Wheaton, minister of the United States at Berlin, which has been ratified. This treaty differs from our commercial treaties with Prussia, the Hanseatic towns, and Denmark, by confining the indirect trade to the productions of the kingdom of Hanover, and of any other country of the confederation, on the one side; and, on the other, to the productions of the United States, and of the South American continent and West India islands. It gives us the right of carrying to Hanover in our vessels the productions of the United States, and of the North and South American continent and islands, in exchange for their right of bringing in Hanoverian vessels to the United States the productions of Hanover, and the countries composing the confederation, and may be regarded as favorable to our navigation.

Several states of the League have manifested dispositions to form treaties with the United States upon a similar basis; but it is not intended, on this occasion, to express any opinion upon the policy of establishing the principle of entire reciprocity in commercial treaties with the minor states of Europe.

One of the advantages already acquired by the negotiations of our minister at Berlin, is a considerable reduction of the duties on rice, which, under a resolution of the House of Representatives of the 11th of June, 1838, he was instructed to endeavor to procure. This important object has been gained, and the consequences, as foreseen, were immediately beneficial to all parties. A great increase in the importation of Carolina rice, which took place as soon as the reduction of duty on the

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article became known, was followed by a correspondent increase of revenue drawn from its increased consumption in Germany. The success of this experiment encourages the belief that a like course in respect to other important staples would be followed by similar results.

The tobacco duties, however, serving as they do the two-fold purpose of raising revenue and of protecting the culture of the tobacco of native growth in Germany, still find formidable obstacles in the way of their removal or modification. The state of the negotiations on this subject up to the session of 1839 and 1840, is sufficiently explained in the correspondence transmitted to the House of Representatives with the President's Message of the 14th of April, 1840.

Several of the states of the Germanic Association have no natural outlet to the sea. Their commerce, therefore, is carried on through rivers, the mouths of which open to the ocean in the territories of other powers. This shows the importance of the union to all the states composing it; but as the union itself is not a government, commercial stipulations and conventions must be made with the states of the Union in their political capacities. By a paper annexed, marked A, it will appear that, in March last, Great Britain entered into a convention of commerce and navigation with Prussia, Bavaria, Saxony, Würtemberg, Baden, the Electorate of Hesse, the Grand Duchy of Hesse, the states forming the customs and commercial union of Thuringia, Nassau, and Frankfort; and similar arrangements with these states might probably be accomplished by the government of the United States.

Such being the general nature of the association, and such our commercial intercourse with it, it becomes matter of interest to consider how far our relations with its several members might be beneficially extended; and if it be thought advisable to enter into commercial treaties with them or any of them, it will remain to be determined whether powers for such a purpose should be conferred upon the minister of the United States at Berlin, or some other diplomatic agency adopted; the general object being to seek the means of enlarging the consumption of the staples of the United States in Germany, and of securing all practicable benefit to their navigation.

There is another part of the subject of our connection with Germany, which, though of less consequence than those that have been pointed out, is, nevertheless, one which deeply concerns the numerous German emigrants who are constantly selling their property to proceed to the United States, as well as our naturalized citizens, natives of Germany, inheriting property in that country. Throughout Germany the *droit d'aubaine* and the *droit de detraction* exist in the shape of a tax, payable

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on the withdrawal from the country of personal property which has been inherited by will or succession, or which forms the proceeds of real property inherited in the same manner. In the United States, as all know, no such tax exists.

It is probable that an exemption from this tax might be obtained on the ground of reciprocity. Some of the states have intimated their willingness to enter into arrangements for that purpose. If there should be thought to be no other reason for a formal convention, this particular object might be effected by a simple official declaration, signed by the Secretary of State, under the seal of the department, certifying that the subjects and citizens of Germany enjoy this immunity in the United States; upon which there is reason to believe that an alteration in their own laws would be made by the states, or some of them, so as to make the right reciprocal. The form of a declaration, such as is stated above, has been adopted by the English government, as may be seen by a paper hereunto annexed, marked B.

All which is respectfully submitted.

DANIEL WEBSTER.

To the PRESIDENT OF THE UNITED STATES.

[A.]

COMMERCE AND NAVIGATION.

Convention of Commerce and Navigation between Great Britain on the one part, and Prussia, Bavaria, Saxony, Würtemberg, Baden the Electorate of Hesse, the Grand Duchy of Hesse, the States forming the Customs and Commercial Union of Thuringia, Nassau, and Frankfort, on the other part.

Art. 1. In consideration of the circumstance that British vessels are admitted, together with their cargoes, to enter into the ports of Prussia, and of the other states of the afore-named union of customs, when coming from the ports of all countries, and in consideration of the concessions stipulated in this present convention for British trade with all the states of this union of customs; in consideration, also, of the facility which the application of steam power to inland navigation affords for the conveyance of produce and merchandise of all kinds up and down rivers; and in consideration of the new opening which may by these means be given to the trade and navigation between the United Kingdom and the British possessions abroad, on the one hand, and the states now composing the union of customs on the other; some of which states use, as the natural

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outlet of their commerce, ports not within their own dominions; it is agreed that, from and after the date of the exchange of the ratifications of this present convention, Prussian vessels, and the vessels of the other states forming the said union of customs, together with their cargoes, consisting of all such goods as can be legally imported into the United Kingdom and the British possessions abroad, by the said vessels, from the ports of the countries to which they respectively belong, shall, when coming from the mouths of the Meuse, of the Ems, of the Weser, and of the Elbe, or from the mouths of any navigable river lying between the Elbe and the Meuse, and forming the means of communication between the sea and the territory of any of the German states which are parties to this treaty, be admitted into the ports of the United Kingdom, and of the British possessions abroad, in as full and ample a manner as if the ports from which such vessels may have come, as aforesaid, were within the dominions of Prussia, or of any other of the states aforesaid; and such vessels shall be permitted to import the goods above mentioned upon the same terms on which the said goods might be imported if coming from the national ports of such vessels; and also that, in like manner, such vessels proceeding from Great Britain and her colonial possessions abroad to the ports or places thus referred to, shall be treated as if returning to a Prussian Baltic port, it being understood that these privileges are to extend to the vessels of Prussia and of the states aforesaid, and to their cargoes, only in respect to each of the said ports in which British vessels and their cargoes shall, upon their arrival thereat, and departure therefrom, continue to be placed on the same footing as the vessels of Prussia and of the other states of the Union.

Art. 2. His majesty the King of Prussia, in his own name, and in the name of the states aforesaid, agrees to place, always and in every way, the trade and navigation of the subjects of her Britannic majesty, in respect to the importation of sugar and rice, upon the same footing as that of the most favored nation.

Art. 3. In the event of other German states joining the Germanic Union of Customs, it is hereby agreed that such other states shall be included in all the stipulations of the present convention.

Art. 4. The present convention shall be in force until the 1st of January, 1842, and further for the term of six years, provided neither of the high contracting parties shall have given to the other six months' previous notice that the same shall cease to be in force on the said 1st of January, 1842; and if neither party shall have given to the other six months' previous notice that the present convention shall cease on the 1st day of

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January, 1848, then the present convention shall further remain in force until the 1st day of January, 1854, and further, until the end of twelve months after either of the high contracting parties shall have given notice to the other of its intention to terminate the same, each of the high contracting parties reserving to itself the right of giving such notice to the other; and it is hereby agreed between them, that at the expiration of twelve months after such notice shall have been received by either party from the other, this convention and all the provisions thereof shall altogether cease and determine.

Art. 5. The present convention shall be ratified, and the ratifications thereof shall be exchanged at London, at the expiration of two months, or sooner, if possible.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereunto the seals of their arms.

Done at London the second day of March, in the year of our Lord one thousand eight hundred and forty-one.

[L. S.] PALMERSTON.
[L. S.] H. LABOUCHERE.

[B.]

Declarations relative to the Duties payable on the Withdrawal of the Property of Foreigners from Great Britain and Bavaria, April, 1836.

BAVARIAN DECLARATION.

Sa Majesté le Roi de Bavière, Comte Palatin du Rhin, Duc de Bavière, de Franconie et en Souabe, ayant eu connaissance que d'après les lois en vigueur dans le Royaume Unis de la Grande Bretagne et d'Irlande, il ne se perçoit aucun droit quelconque à raison de l'exportation et du transport des héritages et autres propriétés appartenant à des sujets Bavarois, le soussigné, Ministre d'Etat ayant le Département de la Maison du Roi et des Affaires Etrangères, declare par ces présentes, au nom du gouvernement de sa majesté, qu'aucune retenue ne sera désormais exercée sous le titre de droits d'aubaine ou de détraction sur les héritages et autres biens échus en Bavière à des sujets de sa majesté Britannique, et que l'abolition de ces droits en faveur de ceux-ci aura son plein et entier effet, non seulement dans touts les cas à venir, tant que les lois ne seront pas changées à cet égard dans le Royaume de la Grande Bretagne; mais encore dans touts ceux ou jusqu'au jour de la signature du présent acte, les droits ainsi abolis n'auront pas effectivement et définitivement été perçus.

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En foi de quoi, cette déclaration, destinée à être échangée contre une déclaration semblable de la part du gouvernement de sa majesté Britannique, assurant une parfaite réciprocité aux sujets Bavarois, a été délivrée par le Ministre d'Etat soussigné, et munie du sceau de ses armes.

Fait à Munic, ce 10me jour du mois d'Avril, en l'an de grace 1836.

[L. S.] LE BARON DE GISE.

BRITISH DECLARATION.

The undersigned, his Britannic majesty's principal Secretary of State for Foreign Affairs, certifies by these presents, that the subjects of his majesty the King of Bavaria are at liberty to withdraw their property from the United Kingdom of Great Britain and Ireland, without being called upon to pay any duty, as aliens, on the withdrawal of it, and without paying any other duty than such as the subjects of his Britannic majesty are equally liable to pay.

In witness whereof, the undersigned has signed the present declaration, and has affixed thereto the seal of his arms.

Done at London the 30th day of April, in the year of our Lord 1836.

[L. S.] PALMERSTON.

THE END.

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