

deputies will complete the number necessary for a quorum of their body.

The great, indeed the only serious obstacle to the prompt meeting of Congress, is the pecuniary destitution under which the government is laboring, and which is so great as absolutely to incapacitate it from supplying the members, as has always been customary, with the means to defray their travelling expenses. This obstacle will, however, I trust be removed in a few days.

I will now enter upon the subject of the treaty itself. The negotiation has been an exceedingly laborious one, and has occupied me without intermission for several weeks, during as many hours of every twenty-four as could possibly be given by me to work; and at no other period of my life, so strong has my health become, could I have undergone the same amount of labor.

Independently of the desirableness that the treaty should be a good one, the very peculiar posture of affairs in this country required that it should be such as to *protect itself* against the tempest of objections ready gathered to burst upon it, as the last resource for overwhelming and overturning the government, in order that the object may be accomplished of compelling our country into an amalgamation with this, by rendering peace impossible in any other way. In order that it might so protect itself, it was requisite not merely that the treaty should present the fewest possible features that could be objected to, but that it should, with reference to the fears, the suspicions, and even the prejudices of the Mexican people, carry upon its face as many positive recommendations as the nature of the subjects stipulated upon rendered practicable.

The plan upon which I proceeded, to arrive at such a result, was, in the first place to request the Mexican commissioners to take the projet of the United States as a basis, and to suggest such modifications as might seem to them desirable. The result of this request was an entire new draught from them; in which but very little of our projet was retained, and in which I found very little that could be acceded to, at least without material changes, either as to substance or as to form. It answered, however, as a basis for me to work upon, in preparing substitutes for the articles contained in their draught: governing myself by our projet, by my instructions, and, where these did not touch the subject, by the treaties which have been entered into by our country. Where these resources all failed, I had to rely upon such knowledge as I possess of her principles and policy, with respect to the various topics that presented themselves. My substitutes led to discussions, in which I had to explain why that which had been proposed by them was inadmissible, wherein consisted the difference between it and the proposed substitute, and why this presented the only way, and the only degree, in which the object could be obtained. In this manner, modifications and remodifications succeeded each other, with reference to every topic which the treaty contains; until finally its various stipulations were agreed upon, both as to substance and as to form. As this was done, the articles were written anew by me, translated by one of the commissioners, (Señor Cuevas, who reads

English very well, although he does not speak it or understand it when spoken,) and then the phraseology changed in one or the other version, or in both, so that the idiom of both languages might be preserved, whilst at the same time the treaty should present in both a correspondence of expressions as well as a perfect identity of sense. In this I had to indulge the gentlemen on the other side, (whose language is more peremptory than ours in its requirements for a correct style,) by allowing them to put into what they considered idiomatic Spanish the meaning of the articles draughted by me, varying the structure as far as they deemed necessary; and then myself writing the articles over again in English, so as to make them conform to the Spanish. As the result of this labor, the treaty, whilst it is both English and Spanish, and not on either side a mere literal translation from the other, will be found to exhibit a correspondence in the two languages, which is by no means common in those which have come under my examination.

Some things which were proposed and strongly insisted upon on the part of the Mexican government, were of a nature to admit of nothing but a positive refusal. Among these were the distinct proposals, that the treaty should be made under the guarantee of neutral powers, and that it should stipulate absolutely for the submission of all future differences to arbitration. The stipulation on the latter subject, as modified by me, will be found in article 21. In that shape, whilst it serves to strengthen the treaty in this country, it can do no harm, but may do good, as a formal recognition of the general expediency and duty of using every endeavor to settle differences otherwise than by a resort to the *ultima ratio*. Besides the two proposals just stated, the negotiation commenced with one to enter into a convention, which, leaving us in possession of the territory comprehended within our proposed boundary should submit the whole question between the two countries to arbitration.

The *boundary* is the one defined in the projet, with a slight variation at its western extremity: an explanation on which point will be found in the accompanying paper, marked A. The one marked B, relates to the parallel of 32° as a boundary. Upon entering on the negotiation, I had, in pursuance of the views presented in your despatch of the 19th July, determined to insist upon that parallel, from the Rio Bravo across to the Pacific, as a *sine qua non*. Although there told that it was not then intended that I should do so, I presumed that the dispositions entertained by the President at the present time required that I should do so now. But, in forming the determination to insist upon this line, I had not adverted to the fact that it constituted an insuperable obstacle to the negotiation of a treaty, no matter what its terms might be in other respects. This was the case, even if the difference between the territory which that line would give us, and that comprehended in the boundary of the projet, should be ever so inconsiderable. It mattered not whether it was ten miles or ten feet in width, the effect would be all the same: to render a treaty impracticable.

The States of Sonora and Chihuahua, which adjoin New Mexico, had solemnly protested against the transfer of a single foot of their territory, and against the validity of any such transfer if made. This was, therefore, a *sine qua non* with the Mexican government, and one which it was absolutely impossible that it should depart from, even if it were ever so strongly disposed to do so, because it would have rendered the ratification of the treaty an impossible thing. Not only would the delegations of those States have opposed it, but it could not have obtained a single vote in its favor. If there be in this country one sentiment more universal and decided than any other, (and this with especial reference to our country, and the design imputed to her,) it is the one which denies the possibility of a valid transfer by the general government of any portion of the territory of one of the sovereign States. The argument on this subject is unanswerable. It is set forth with great clearness by the puros (or war-until-annexation party) in the manifesto referred to in my despatch of the 26th December, as constituting "the last stand made by them in the character of members of the expiring constituent Congress against the consummation of the measure (a treaty of peace) upon which the government is known to them, and to every one, to be intent." Nor does it avail to urge against this denial of authority in the general government *the supreme law of necessity*, for it is fortified at this point also. It says: If the Union, after having exhausted all its means in the defence of its members, finds itself incapable, in regard to any one or more, of protecting them; in such case, let the portion of the republic with respect to which the impossibility of defence exists be *abandoned* for the time. But this inability gives no right to the Union to *alienate* any portion of any State, whether it be for the purpose of purchasing peace for the rest, or any purpose whatever. No such alienation can be valid.

Thus insurmountable was the obstacle to the adoption of the parallel of 32° as the boundary. The only particular in respect to which it was practicable to overstep this limitation to the transfer of territory, is the small portion of the State of Tamaulipas, lying north of Rio Bravo, and running a short distance up that river; which strip of country (extending either to the Nueces, or as far as the San Antonio, I do not recollect which, and have not the references at hand) just as certainly constituted a part of that State, and not of Texas, at the time when the latter declared her independence, as it is certain that the counties of Accomac and Northampton do now constitute a part of the State of Virginia, and not of Maryland. Tamaulipas, however, has not made any protest on the subject; and it is believed that the boundary will be silently acquiesced in by her, and that, in view of the extreme peculiarity of the case under every aspect, this departure from the principle will not be made a point of by those in favor of peace. The declaration with which the article on the boundary concludes, was a *sine qua non* on the part of the Mexican government. I entertain no doubt whatever of its great importance in respect to the ratification of the treaty; and my mind is far from being satis-

fied—such is the state of the public mind on this point—that the ratification would have been practicable without the aid which it gives. It was proposed that it should form an article apart, in terms that were inadmissible. In its present form and place, it is the result of repeated conversations, and was offered by myself; after which, several modifications of phraseology were proposed from the other side, a part of which were acceded to, and the rest not.

The *indemnity*, or amount to be paid by the United States, is five millions less than the sum I was authorized by my instructions to pay for the same boundary, and which a compliance with those instructions would have required me to agree to pay, if necessary to secure that boundary, had a treaty been made in September last; or, indeed, at any time prior to the receipt of the counter-instructions, which (the *triplicate* thereof) first came to hand on the 16th of November, as the department was advised at the time. Taking into consideration, on the one hand, the time when the offer of twenty millions for the same boundary was made by the United States, (not formally or upon paper, but by an intimation from me, which was just as binding,) and the period during which that offer had remained in force; and, on the other hand, the contents of the despatches received by me in November, and those of the President's message, as regards the increased expenditure of blood and treasure attending the prosecution of the war, in connexion with the continued disposition of our government not to exact more than a fair compensation for that expenditure; taking all these things into consideration, and taking also those twenty millions as the standard for my government in estimating the deduction which should be made from it, to bring the sum into accordance with those views, I have deemed it my duty to strike off five millions, and at the same time not to reduce the sum any lower. I made the offer of the fifteen millions at once, announcing that it was the highest point to which I could go. I was not at the time aware that the Mexican plenipotentiaries had had their hands tied against accepting anything less than thirty millions. This was the case, however, and it has continued to be the case down to this moment. The copies of the treaty for signature, now being made, must stop at the 12th article, until the government at Queretaro shall have consented to accept the fifteen millions, upon learning that I have remained inflexible upon that point, even at the risk of the treaty being lost, and shall have made its election as to the mode of payment.

With regard to the *discharge and assumption* of claims, explanations will be found in the accompanying paper, marked C.

The condition of the inhabitants of the ceded or transferred territory is the topic upon which most time has been expended, in the modes stated at the commencement of these remarks. It constituted a subject upon which it was all important that the treaty should be guarded at all points, and should recommend itself as strongly as possible. Everything proposed on the other side in regard to it was inadmissible or objectionable, in substance or

form; and the articles as they now stand are the result of draughts prepared by himself, and were repeatedly amplified and otherwise altered, to meet the wishes of the Mexican commissioners. The stipulations regarding the incorporation of the inhabitants into our Union were restricted to the *Mexican* inhabitants, because, as the Mexican commissioners stated, their government has no right to enter into such stipulations in regard to the foreigners who may be residing in the transferred territory. The right of Mexicans residing there to continue there, retaining the character of Mexican citizens, would follow as a necessary consequence from the right secured to such citizens by the treaty of commerce, to go and reside there. On this point, and for the right secured to such citizens, resident or non-resident, to retain the landed property they may now own there, a precedent was afforded by our British treaty of 1794, (articles 2 and 9.) The liberty to "grant, sell, or devise the same to whom they please," I qualified by restricting the right of purchase to *Mexicans*. This stipulation is particularly important to landholders on the Rio Bravo, and especially so to the citizens of Tamaulipas, the estates of some of whom, situated south of the Bravo, are dependent in some respects for their value upon lands on the north of that river, which are used as pastures.

With respect to grants of land made by the Mexican authorities, the *proviso* contained in my instructions was strenuously objected to upon a point of national honor and decorum. No such grants had been made since the 13th May, 1846. This they knew, and consequently the *proviso* could have no practical effect. But it implied that they had been made, or might have been made, and that nevertheless the government committed the injustice of revoking them; which, in fact, it had authority to do. Moreover, it involved an acknowledgment that, from the day when hostilities broke out on the north of the Rio Bravo, the Mexican government had lost the right to make grants of land in any part of its territory subsequently occupied by us. Feeling the force of these objections, I requested to make sure of the fact stated by them; and also, in regard to no grants having been made in Texas since the revolution, which had been incidentally mentioned by one of them. And this having been done in a manner which left no shade of doubt on their minds, the declaration which will be found at the end of article 10 was agreed upon, in lieu of the *proviso*.

The stipulation respecting grantees who had been prevented from fulfilling the conditions of their grants, was taken from the Florida treaty; that precedent being modified to meet the necessity of distinguishing between lands in Texas and those situated elsewhere, and of respecting her authority over the subject. This did not permit the declaration that the grants within her limits shall be null and void, as she might have seen fit, or might see fit hereafter, to adopt a different determination. Nor did it permit the declaration that they shall not be obligatory upon her, (as I had at first written it,) except with the qualification, "in virtue of the stipulations contained in this article." On the other hand, the right of the United States to stipulate with Mexico in regard to

grants of land in Texas seemed to me, beyond the possibility of question, to be involved in the transfer from Texas to the United States of the authority to make a treaty of peace between her and Mexico.

The stipulations respecting the Indians inhabiting the transferred territory, independently of their justice, were indispensable to make the treaty acceptable to the northern States, or to any who take the proper interest in their security; in a word, to any one who has the feelings of a Mexican citizen, or at least respect for the obligations which a federal union imposes. Excepting only the specific prohibition against supplying the Indians with fire-arms and ammunition, (if, indeed, this can justly be deemed an exception,) those stipulations contain nothing which is not expressed or plainly implied in the treaty of amity, commerce, and navigation, (article 31,) which is revived in the present treaty of peace. But, to make the article what it must be, to satisfy the public mind of this country, it was necessary that those implied obligations should be set forth in detail, and expressed in the most unequivocal manner. Upon examining the old treaty, I found that it imposes absolutely, and without any saving or qualification whatever as to the practicability of the thing, the obligation "to *restrain*," by force, "all hostilities and incursions," and "not to *suffer* their Indians to *attack*;" and also, in regard to captives made by Indians, "to return them to their country as soon as they know of their being within their respective territories." I found, also, that the last sentence is so worded as to restrict the prohibition against the purchase of captives, in a manner which could not possibly have been intended. In the new treaty the obligations above referred to are expressed with the qualifications demanded by the nature of the subject, in order that they may have the character of a practical law, agreed upon and established upon serious consideration of its requirements, and in the *bona fide* intention that these shall be fulfilled; an intention which stands exposed to serious doubt, when engagements entered into "in the most solemn manner" are found expressed in a manner so loose, that their exact fulfilment, as expressed, involves impossibilities.

The stipulations concerning merchandise imported into the country during our occupation of its ports required to be put into their present form, in order that they might not have the effect of placing such merchandise, with respect to its introduction into places not occupied by our troops, on a *better* footing than if imported in a time of peace; which, even if it could have been demanded consistently with justice, was, in a practical point of view, impossible, by reason of its incompatibility with the execution of the State and municipal laws regarding this subject. To discriminate in this regard between merchandise imported through ports occupied by us, and other merchandise, would have been practically impossible, owing to the temptation and facilities it would have afforded to frauds, and the endless controversies, complaints, and claims to which it would have given rise. For the same reason, the right to reship was restricted to goods *in the ports*; other-

wise it would have put it in the power of any one, under the pretext of going to a port of reshipment, to traverse the republic with goods, passing through whatever places he pleased, and dropping them on the way.

The last article is founded on one contained in our treaty with Prussia, of 1785, (which bears the signatures of Benjamin Franklin, Thomas Jefferson, and John Adams.) In the first draught presented by the Mexican commissioners, the article had been copied from the Prussian treaty. After making in it such modifications as seemed to me desirable, it was agreed upon in that shape.

The preamble, also, after a few modifications, was adopted from the draught of the Mexican commissioners.

I am, sir, very respectfully, your obedient servant,

N. P. TRIST.

Hon. JAMES BUCHANAN,
Secretary of State.

[Enclosure in No. 27.]

C.

Memorandum.—Saturday night, January 22, 1848.

ASSUMPTION OF CLAIMS.

The article on this subject, (article VI.,) as it stands in the original project from Washington, was objected to by the Mexican commissioners, (as respects the non-liquidated claims,) on the ground of the questions and discussion for which it affords room, in consequence of the *assumption* and the *discharge* being blended together, and the former being limited in point of *amount*, and otherwise qualified; thereby affording ground for the objection, when the treaty shall come under discussion, that, in the very nature of things, the discharge could not but be limited and qualified in the same way. To my answer that the article closes with a complete discharge "from *all* liability for *any* of the said claims, whether the same shall be rejected or allowed by the said board of commissioners;" and, consequently, whatever the amount of those allowed might be, and even whatever the amount of those *presented* might be, although they should be rejected on no other ground than that they were "not embraced by the principles and rules" prescribed to the board of commissioners; they replied, that all this, however true it might be, was matter of inference, and left room for argument and discussion on the part of those disposed to find fault with the treaty; and they insisted upon the indispensableness that its stipulations on the subject should be so clear, and definite, and precise, as to preclude all possibility of doubt or of argument.

They proposed that there should be no limitation of the amount as to this class of claims, either in connexion with the discharge

or with the assumption. I at once told them that in regard to the latter, the amount must be limited. This was a *sine qua non*. "Why?" They could not see any reason for this, and it seemed to them to involve a contradiction that Mexico should receive an unqualified discharge from a class of claims, the amount of which could not be precisely known at the time the discharge was given, and yet that the amount assumed by our government should be a limited one. Suppose that the amount of the claims allowed by our board of commissioners as just, should exceed that limit; what would the United States do then?

I answered, that, in the first place, the limit which had been fixed was founded on data sufficient for a near approximation to the highest sum which, in all probability, could be necessary for paying the just claims; and that, in the next place, if that sum should prove insufficient, the discharge given to Mexico would present a case for the justice and equity of our Congress, in respect to which there was no danger of its being disregarded. Because the obligation to pay *now* contracted was limited to a certain amount, it did not at all follow that if justice should require the payment of a larger amount, provision would not hereafter be made for paying the excess. But that this obligation should, in respect to the amount to be paid, be limited in the treaty, was a *sine qua non* which it was a waste of time to talk of my departing from; because our Senate could not be called upon to vote upon a treaty containing a stipulation of this kind, without their being informed what was the extent of the obligation so incurred—without their knowing that it had a limit, and what this limit was. This limit might, it is true, be ascertained without its being inserted in the treaty. This was not, in the nature of things, impossible; but it was so, in a practical sense, when considered with reference to the action of the Senate upon a treaty. Viewed under this aspect, the only way of treating such a question was, to cut it short by fixing a limit to the sum which the Senate should, *then* and by that vote, consent to place the nation under the obligation to pay. Nor did such restriction of this obligation weaken the force of any other or further obligation which might be involved or implied in the discharge given to Mexico, any more than it weakened the force of any other stipulation contained in the treaty; its sole effect was to leave that other or further obligation, whatever it might be, to be judged of and dealt with by itself. It was perfectly evident, too, that it could not possibly have any such effect as that of qualifying in any manner the discharge given to Mexico by the sentence with which the article closes, as it stands in the projet.

Although I was thus positive in regard to specifying a limit, in connexion with that part of the agreement which binds us "to assume and pay," I was fully sensible of the indispensableness that the wording of the treaty on this whole subject of claims (for it is the one above all others on which the Mexican mind is most sore and suspicious) should be such as to preclude the possibility of discussion and of doubts, real or pretended. I was aware, too, that the article, as it stands in the projet, is not well adapted to