

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

this object; that, however easy it may be to an English reader to ascertain its import with reference to any question that may be started in regard to the nature or extent of the obligation expressed by it, its form and texture, beginning with an assumption of the class of claims there specified, connected with a limitation of the amount, and then the qualification that they "shall be found justly due," and then the "proviso," and the discharge following after all this, are not at all favorable to its import being satisfactorily seized by a Spanish mind; habituated, as those minds are, and necessarily become from the very nature of their beautiful and noble language, to the most lucid, precise, and logical modes of statement and expression on all subjects. In a word, the article when translated, although accurately translated, presented a maze which perplexed and racked the brains even of the commissioners (men of very clear heads and great ability) in the attempt to follow it out.

It was indispensable, therefore, to take the article to pieces, in order that its substance might be incorporated in separate and perfectly distinct stipulations. The final result of this labor on my part (which, as regards mere form, was adapted to the wishes of the Mexican commissioners) will be seen in articles 13, 14, and 15; the substance of which differs from that of the projet in the two following particulars, and in these only: 1st. In substituting, as regards the non-liquidated claims, the words "which may have arisen previously to the date of the signature of this treaty," for "which may have arisen previous to the 13th of May, 1846." 2d. In extending the limit with respect to those claims, to "three and one quarter millions," instead of "three millions."

The discharge given to Mexico is contained in the XIVth article. This, with the exception only of the extension of the period just specified, is in substance identical with the discharge expressed in the projet. Upon carefully examining the latter, in order that this identity might be preserved—absolutely in point of substance, and as closely as possible in point of phraseology—I thus arrived at the substance of the discharge.

The article, as it stands in the projet, concludes as follows: "And the United States do hereby forever discharge the United Mexican States from all liability for any of the said claims, whether the same shall be rejected or allowed by the said board of commissioners."

What is the meaning here of "the said claims?" The answer to this question is found in that portion of the preceding passage which is underscored in the following quotation of the entire passage:

"And the United States also agree to assume and pay, to an amount not exceeding three millions of dollars, all claims of citizens of the United States, not heretofore decided against the government of the United Mexican States, which may have arisen previous to the 13th of May, 1846, and shall be found to be justly due by a board of commissioners to be established by the government of the United States, whose awards shall be final and conclusive: Provided that, in deciding upon the validity of these claims, the

board shall be guided and governed by the principles and rules of decision prescribed by the first and fifth articles of the unratified convention, concluded at the city of Mexico on the 20th day of November, A. D. 1843; and in no case shall an award be made in favor of any claim not embraced by these principles and rules."

Whatever might be the perplexity occasioned by this passage to a Spanish mind, and whatever might be the pretexts afforded by it for discussion in the Mexican Congress, its meaning is perfectly clear to any English reader. Taken in connexion with the discharge, as expressed in the sentence "And the United States do forever discharge," &c., which immediately follows, it is certain that this discharge embraces "all claims of citizens of the United States, not heretofore decided against the government of the United Mexican States, which may have arisen previous to the thirteenth of May, 1846;" and that it is in no manner whatever affected by the limitation "not exceeding three millions of dollars," nor by the qualification "and shall be found justly due," &c. That this limitation and qualification apply solely to the obligation to pay, and cannot by any possibility be understood as attaching to the discharge, is proved conclusively by the fact that the discharge, although restricted to "the said claims," goes on to say, "whether the same shall be rejected or allowed by the said board of commissioners." Not only does this addition exclude the possibility of any such interpretation of the article as would attach the limitation and qualification in question to the discharge, but it does more: it makes the discharge still more comprehensive than it would necessarily be from that mere exclusion. It makes it extend beyond the class of claims "embraced by the principles and rules" referred to; for the board being, as it is, bound not to give "an award in favor of any claim not embraced by these principles and rules," it follows that the want of this requisite alone must constitute the ground for the rejection of all claims which, being brought before the board, shall be found wanting therein. Consequently, if any such claims shall chance to be presented, they must be "rejected;" and must, therefore, take their place among those from all liability for which the Mexican government is forever discharged.

Having thus satisfied myself as to what constitutes the substance of the discharge given to Mexico by the article as it stands in the projet, and that, without its being in any manner affected by such separation, it could be separated from the context, and made the subject, by itself, of a stipulation distinct from all others, I adopted this course, and made it constitute the XIVth article.

For such separation of the discharge, stipulation from the one which assumes to pay, the Florida treaty affords a precedent. It affords one, likewise, for making the date of the signature of the treaty the limit of the period with reference to which the discharge is given. Upon this point, the Florida treaty says, "reciprocally renounce all claims for damages or injuries which they themselves, as well as their respective citizens and subjects, may have suffered until the time of signing this treaty." In the specification which follows, it says, "all claims of citizens of the United States upon

the Spanish government, *statements of which*, soliciting the interposition of the government of the United States, have been presented to the Department of State, or to the minister of the United States in Spain, since the date of the convention of 1802, and until the signature of this treaty." The treaty being made at Washington, the discharge did, therefore, embrace, either in fact or by possibility, claims of which the government of the United States could possess no knowledge at the time of giving the discharge. The present treaty, retaining the phraseology of the projet, and changing only the period of time, reads, "which may have arisen previously to the date of the signature of this treaty," &c.

In this deviation from the projet, I have not, however, been governed or influenced by the precedent. My motive was, the strong considerations, both of justice and of expediency, by which it was recommended, and under the influence of which I had made up my mind to offer it, before a word had passed between the Mexican commissioners and myself. When we came to this subject, they proposed to fix the date of the exchange of ratifications as the limit to the period in question. They urged this strongly; and they gave what I believe to be good and substantial reasons for so doing, which reasons may be summed up in the single fact stated to me by Señor Couto, who has filled the post of minister of justice, and who (as was remarked to me by a foreigner residing here, and one whose judgment on such a point I consider as much entitled to reliance as that of any person known to me) is really, and truly, "a character without a blemish." This character without a blemish, the purity of whose life, in all respects, would, so far as my belief goes, advantageously compare with that of any man living in any country, said to me: "* * * * *

And the same is the case with respect to almost every judicial proceeding in which a foreigner is involved. Let its legality, and justice, and equity be ever so manifest, still the complaint and claim for indemnity is sure to come up." Upon this point, however, I was governed by the precedent; and I fixed myself upon it as one beyond which I would not go; not that I believed that the extent of the obligation on our part would, as to its practical consequences, be varied a hair's breadth by adopting the limit proposed by them in place of the time of signing the treaty; for I considered it as scarcely within the bounds of possibility that, under existing circumstances, a single just claim should arise between the signing of the treaty and its ratification. But, as there was already a precedent for the one period and not for the other, I was resolved to adhere to the precedent, simply and solely for the sake of avoiding all unnecessary multiplication of the questions to which the treaty would give rise when it should come under examination.

The considerations to which I have adverted as those which determined me to make the offer, I will not succinctly state. There is no point at which the treaty could be more effectually fortified,

and none at which it was more important that it should be secured against objections, and made acceptable to the Mexican people, than the one here under contemplation; the subject of claims being, as I have already said, the one upon which they are most sore and suspicious, and in regard to which, any security afforded them would be most effectual in producing general satisfaction. On this subject, their feelings are those of a covey of partridges, with reference to the hawks that visit the region where they inhabit. I do not, here, enter into the causes of this feeling, nor into the inquiry whether just grounds for it have, or have not, been afforded. I merely state the fact that it exists; and to this fact every impartial foreigner, who has been among them, will bear witness.

With respect to the period intervening between the date fixed in the projet (the commencement of hostilities) and the signing of the treaty, I had no doubt that claims to a very great amount would be brought, founded on alleged infractions of the 26th article of the treaty of 1831; whilst, on the other hand, I had as little doubt that the amount of just claims of this description would be very inconsiderable indeed. My mind is not, by any means, satisfied that there is a single one which our country would be under any equitable obligation to exact indemnity for, even if she could do so at far less cost to herself than the prolongation of the war by a single day, or a single hour. I doubt, indeed, whether there be a single case of the kind, whatever be the losses which the party may allege, or may, in truth, have incurred, which an impartial tribunal, untrammelled by any rule save the obligation to obey the dictates of an enlightened equity, would make the ground for a decree of indemnity at the expense of the community where those losses occurred, or of any one except those by whose acts they were brought about.

So far as the article referred to concerns *merchants*, an equitable claim upon the people of the United States, either to exact or to pay an indemnity for losses incurred by individuals of that class, in consequence of a violation of the stipulation which the article contains in their favor, even supposing this violation to be clearly proved, and to be clearly proved to have not been (as, under such circumstances, it must *prima facie* be presumed to have been) an inevitable consequence of the state of war; such equitable claim, even with these things all in its favor, manifestly requires, moreover, that the party shall have shown due diligence in using the time which that stipulation allows for extricating himself from the consequences naturally incident to a residence upon the theatre of hostilities; among which consequences is the constant risk of that *vis major* which overrules all law, and which might at any moment, even although that time had not expired, render his removal a measure of permanent military necessity, absolutely indispensable to the defence and safety of the country. No such title certainly could be pleaded—there would not be the slightest pretext for the claim—on behalf of one who had allowed the whole time to expire. Nor could it be pleaded on behalf of one who had al-

lowed *any part* of that time to pass without giving proof of an *animus* altogether the reverse of that of continuing where he was.

The same considerations apply, in a great measure, and in some respects yet more forcibly, to persons *other than merchants*, who, finding it to their account to do so, had seen fit to continue in the enemy's country. The stipulation made in favor of such persons could never be construed into an obligation on part of the country, which, for their own profit and advantage, they had abandoned in order to establish themselves in another, either to indemnify them at the expense of those of her citizens who had been content to remain at home, for any losses they might have sustained as a consequence of the election they had so made, or to prolong the war indefinitely, until the enemy should consent to take the burden of such indemnity upon himself; or, which practically amounts to the same thing, should agree to remain subject to a *claim* for that indemnity after peace should have been made. Nothing but a case of the very clearest and strongest kind that can be conceived—a case of deliberate wrong altogether unprovoked, altogether uncalled for by the exigencies of war, altogether unconnected with its casualties—could warrant any such expectation on the part of any person who, having seen fit to seek in a foreign country a more advantageous field for carrying on his trade than the one afforded by his native land, had found it for his advantage to remain there after the two nations had become involved in war. And even in a case of this kind, the question would still be between *justice*, naked justice, and nothing more, to the millions who had remained at home, and *favor*, gratuitous favor, to the few who had elected to go abroad and settle there in order to be better off than those who remained at home.

I am old enough to recollect that during our last war with England many British subjects, merchants and others, were required to leave New Orleans, and I think other places on the seaboard, for the interior of our country. I find in our treaty of 1794 with that nation, (article 26,) stipulations similar to those contained in our treaty with Mexico, and still stronger; for they not only secure to "merchants and others" "the privilege of remaining and continuing their trade so long as they behave peaceably, and commit no offence against the laws;" but they require that, even "in case their conduct should render them suspected, and the respective governments should think proper to order them to remove, the term of twelve months from the publication of the order shall be allowed them for that purpose," &c. In the treaty of peace of 1814, nor in the subsequent conventions, I find no provision for indemnifying such British subjects for the losses sustained by them in consequence of their expulsion from the places where they were carrying on their business, under the guarantee afforded by these stipulations.

While examining the recent work of Monsieur de Mofras, in quest of geographical information respecting the line of division between the Californias, I came to the following passage, (vol. 2, p. 473:) "We know only the decision of England as arbitrator,

which denies to the French, expelled after the capture of San Juan d'Ulloa, all manner of indemnity for the losses caused by that expulsion." Now the expulsion here referred to was, by a decree which operated throughout the republic, upon all French subjects *en masse*, without being founded upon special reasons in individual cases, either as to persons or places. A considerable number sailed from the country, and a far greater number had to break up their business, abandon their abodes, and depart with their families for the seaports, before the operation of the decree was arrested. In this way, many hundreds in one body left the city of Mexico. I have not been enabled to obtain a copy of the decision given by the British government in this case, nor of the stipulation by which the question was submitted to arbitration. I am therefore, uninformed as to its precise nature, and as to the principles upon which the decision rested. But, inasmuch as no treaty existed between France and Mexico, the case cannot have been submitted as turning upon a question of interpretation, or of strict *law*, in any way. It must have been submitted as a case in equity, as one depending upon equitable principles, in their application to the relation which, agreeably to the received doctrine in regard thereto, exists between the foreign residents of a country and the government of that country, when war exists between it and the one to which they belong.

But, whatever may be the principles which shall be deemed to afford the proper rule in regard to cases of this description, and looking only to the *loss of property* actually incurred, my conviction is, that the amount cannot but be very inconsiderable, and that it could be made to appear otherwise only by fictions and by estimates of *consequential* losses, based upon the assumption, that the parties were entitled to be insured, at the expense of our country, from the breaking up of their business, and other ordinary incidents to war; incidents similar to those which commonly attended the state of war, even in places remote from the state of hostilities, and which would, in our own country, affect in a greater or less degree the business of every one of her citizens residing in or near a place captured, or besieged, or threatened, or blockaded by the enemy.

In view of the addition of the period of the war to the term for which the discharge from claims is given to Mexico, I have added one quarter of a million to the three millions fixed by the projet, as the extent to which claims, *if found just*, shall be paid. I have made this addition, not that I believe that the claims arising during the war, which shall be found just, will amount to anything like this sum, or that the three millions will not prove more than sufficient to cover the whole, but because the offer of the three millions, with reference to those arising before the war, having already been made and become publicly known, it seemed proper that the addition made to the discharge should not appear, except accompanied by some increase of the sum. As it is only in the event of the claims being found justly due, that this increase takes effect, no necessity existed for limiting its amount to that of an estimate in regard to the sum total of these claims.

[The following papers were inadvertently omitted in their proper order.]

[No. 9.]

PUEBLA, July 23, 1847.

SIR: * * * * *

In my No. 8, under date the 7th instant, I transmitted a copy of a letter addressed by me to General Scott, under date the 25th June, and his reply to the same. This constituted the commencement of our official intercourse with reference to the duties with which I am charged. Justice—to say nothing of my own feelings towards a gentleman and a public servant, whose character I now believe that I had entirely misconceived—demands that I should embrace this early opportunity to say that his whole conduct in this regard has been characterized by the purest public spirit, and a fidelity and devotion which could not be surpassed, to the views of the government in regard to the restoration of peace. This spirit on his part—as will clearly appear when the details are communicated—has manifested itself, not in a passive way merely, (as might be supposed from the nature of our relative positions and duties,) but in a disposition to assume responsibility—and responsibility of the gravest kind—in utter disregard of consequences to himself. And this disposition—or rather, this readiness and fixed determination—on his part, although the occasion which has called it forth did not relate to the discharge of his military duties, strictly speaking, has not required any appeal from me to elicit it, but has manifested itself in the most spontaneous and patriotic manner. Under these circumstances, it would not but be a cause of the most serious regret on my part if the correspondence between us, that took place shortly after my arrival in this country, should in any way be brought to the notice of the public; and, consequently, if in your judgment consistent with propriety, it would be highly gratifying to me to be permitted to withdraw it from the files of the department.

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

N. P. TRIST.

Hon. JAMES BUCHANAN,
Secretary of State.

[Enclosure with Mr. Trist's despatch No. 9.]

Message of the President, (Santa Anna,) through his Secretary of State, to the Mexican Congress, July 16, 1847.

It commences with a succinct but perfectly lucid and candid statement of what has occurred, beginning with the note of our government of the 17th June, 1845, and ending with that of the 15th April last, which is represented as saying, that inasmuch as the objection to receiving Mr. Slidell was the too great amplitude of his charac-

ter, the United States now send Mr. N. Trist, who, *although a person of standing in the republic*, being the second officer of the ministry of foreign relations, is not invested with any character beyond that of commissioner, nor any mission or faculties beyond treating of the means of terminating the war, &c. It then proceeds:

“H. E. the President *ad interim*, Don A. L. S. Anna, who was called upon by the nation *to conduct the war of defence* against the United States, in the war of invasion which these are prosecuting against it, of rare example in history for its injustice, &c.; and who, responding to this call of his country, and to the impulses of his heart, has led the army even beyond the desert to seek the enemy,” [here S. A.’s exploits.] “H. E. the President, I say, who has done and is doing all in his power to push the war, found himself, nevertheless, with this business begun; and not wishing to do aught *but the will of Congress, as the interpreter of that of the nation*, which had specially assigned to it the duty of *taking cognizance of everything relative to the war*, he referred this note [Mr. Buchanan’s] to them, that they might consider and determine upon it. Having [the minister] laid before him the note of your excellencies [the secretaries of Congress] communicating the determination taken on the subject, he directs me to reply, saying to your excellencies, in order that you may be pleased to communicate the same to Congress, that he entertains a sincere *doubt of law* in regard to the interpretation which should be given to their said resolution. It is therein said that, in the present posture of the business, its cognizance belongs to the Executive.

“Had the object for which the Executive referred the note of the Secretary of State of the United States been, that he might know his powers; and, more clearly still, if what he meant to request had been an opinion in regard to which is the proper branch of the government to initiate, or to accept an initiative, for the opening of treaties of peace—in such case the reply would have been categorical. But no doubts having occurred to the Executive in regard to the extent of, or the time and restrictions of the powers conferred upon it by the fundamental code, the necessary determination asked for by it is, whether, using those powers, and confining himself in so doing to the restrictions of the fundamental code, it shall answer the note by saying that it will hear, or that it will not hear, the propositions which it is desired to make to it. *For the dignity of this nation, this note cannot remain without reply*, a reply which the commissioner is now awaiting at the city of Puebla, *unless this also should be so resolved by Congress*. And if it is to be replied to, the Executive does not wish to do aught but the will of Congress. It does not suffice that Congress should leave it at liberty freely to use its constitutional powers in regard to the business as it now stands; and for which renewal of confidence I am instructed by the Executive to express its most submissive thanks. This does not suffice, because another law, (that of the 20th April last,) which, although secondary, is yet *ad hoc*, and was passed by Congress in fulfillment of its mission *to take cognizance of all things relative to the war*, conflicts with the present resolution of Congress, and