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Mr. Romero to Mr. Seward.

[Translation.]

MEXICAN LEGATION IN THE UNITED STATES OF AMERICA,
Washington, November 22, 1862.

MR. SECRETARY: I have the honor to inform you that my government has given me instructions to communicate to that of the United States that the Mexican government has reliable information to the effect that the chief of the French expedition, which is invading the republic, has sent emissaries to New Orleans and New York to purchase mules and wagons for transporting the cannon, war materials, and provisions to the interior of Mexico. My government thinks that if such purchases should be realized, the neutrality to which they are bound would be violated by the sellers, this being the position which the government of the United States has desired to take in the war which the Emperor of the French is waging against my country. It is not doubted, in the opinion of my government, that such a sale would be a direct assistance to one of the belligerents, since it would be given to its army, which necessarily would use it in acts of hostility. In view of the preceding considerations, the government of Mexico has instructed me to solicit from that of the United States that, if it should not already have been done, it issue the orders it may deem proper to prevent the effects indicated from leaving the ports of the United States purchased for the use of the army now invading Mexico. Before these instructions had reached me I had learned, in a most reliable manner, that the emissaries of the French destined to New York had arrived some days since at that port, and were busy in purchasing the effects which they came to procure.

I avail myself of this opportunity to renew to you, sir, the assurances of my most distinguished consideration.

M. ROMERO.

Hon. WILLIAM H. SEWARD.

Mr. Seward to Mr. Romero.

DEPARTMENT OF STATE,
Washington, November 24, 1862.

SIR: I have the honor to acknowledge the receipt of your note of the 22d instant, informing me that you have been instructed by your government to make known to that of the United States that the commanding general of the French

expedition now invading the territory of Mexico has sent emissaries to the cities of New Orleans and New York for the purchase of mules and wagons with which to transport his cannon, war materials, munitions, and provisions to the interior of Mexico; that the government of Mexico thinks that citizens of the United States would, in making sales of these articles to said emissaries, violate the neutrality they are bound to observe towards Mexico, and that the government of Mexico does not doubt that such sales would be the giving of direct assistance to the French army, which would use them in acts of hostility towards your government; that prior to your receipt of said instructions, you had been reliably informed that these French emissaries had arrived at New York, and were there busily engaged in the purchase of the articles they came to procure; and, finally, that in view of these facts the government of Mexico desires that this government shall issue, if it should not already have done so, the proper orders to prevent the effects mentioned from leaving the ports of the United States, they being purchased for the use of the French invading army.

In reply, I have the honor to inform you that, prior to the receipt of your note aforesaid, information of a similar nature had reached this department through the consul general of the United States at Havana, and that the matter had been submitted to the consideration of the Secretary of the Treasury, a copy of whose reply I herewith enclose, together with the extracts from the authorities in the case; and from which it appears that no intervention with the mission of the French officers is contemplated by the Treasury Department, to whom the subject more immediately appertains.

This decision appears to be in conformity with precedents, and with the rules of international law governing the case.

I avail myself of this opportunity to renew to you, sir, the assurances of my consideration.

WILLIAM H. SEWARD.

Señor Don MATIAS ROMERO, &c., &c., &c.

Enclosures with Mr. Seward's note, November 24.

TREASURY DEPARTMENT, November 20, 1862.

SIR: I have the honor to acknowledge the receipt of your letter of the 29th ultimo, covering the despatch of the consul general of Havana concerning the departure of two officers of the French army for New York to purchase supplies for that army in Mexico.

I send you enclosed authorities in this case, collected for me by Mr. Marcellus Bailey, of the office of the Solicitor of the Treasury, which may be acceptable.

No intervention with the mission of these officers is contemplated by me.

With great respect,

S. P. CHASE, Secretary of the Treasury.

Hon. W. H. SEWARD, Secretary of State.

Instructions to collectors of customs, issued by Alexander Hamilton, Secretary of the Treasury, August 4, 1793.

"The purchasing and exporting from the United States, by way of merchandise, articles commonly called contraband of war, being generally warlike instruments and stores, is free to all parties at war, and is not to be interfered with. If our own citizens undertake to carry them to any of these parties, they will be abandoned to the penalties which the laws of war authorize."—(*Am. State Papers, Foreign Relations, vol. 1, p. 141.*)

Mr. Webster to Mr. Thompson, July 8, 1842.

"It is not the practice of nations to undertake to prohibit their own subjects 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 particular treaties."—(*Webster's Works, vol. 6, p. 452.*)

Mr. Webster's instructions of July 8, 1842, cited in Gardner's Inst., American International Law, p. 552.

"That if American merchants, in the way of commerce, had sold munitions of war to Texas, the government of the United States, nevertheless, were not bound to prevent it, and could not have prevented it without a manifest departure from the principles of neutrality."

President's message, 1st session 34th Congress.—Franklin Pierce, President; William L. Marcy, Secretary of State.

"The laws of the United States do not forbid their citizens to sell to either of the belligerent powers articles contraband of war, or take munitions of war or soldiers on board their private ships for transportation; and although, in so doing, the individual citizen exposes his property or person to some of the hazards of war, his acts do not involve any breach on national neutrality, nor of themselves implicate the government."—(Ex. Doc., 1855-'56, vol. 1, Pt. I, p. 6.)

Mr. Webster to Mr. Thompson.

"As to advances, loans, or donations of money or goods made by individuals to the government of Texas or its citizens, the Mexican government 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."—(Ex. Doc., 27th Cong., 2d Sess., 1841-'42, vol. 5, Doc. 266.)

Mr. Romero to Mr. Seward.

[Translation.]

MEXICAN LEGATION IN THE UNITED STATES,
Washington, December 10, 1862.

MR. SECRETARY: The note which you were pleased to address to me under date of the 24th of November last past, and the documents thereto annexed, have informed me that the honorable Secretary of the Treasury of the United States does not propose to interfere with the purchase of articles contraband of war which the officers of the French army invading Mexico may make in the United States, and who have come to obtain the means of transportation for the use of the same army, and to whom I alluded in the note which I had the honor to address you on the 22d day of November aforesaid. It is not possible for me to refrain from expressing the pain and surprise caused me on learning that the decision of the honorable Secretary of the Treasury was sustained by yourself, for, in truth, it is very different from that which I thought myself entitled to expect. Assuming, as my government has assumed, that that of the United States is a neutral in the war which the Emperor of the French is waging against Mexico, it was natural to hope that if, in consequence of such a condition, this government did not aid one of the belligerents, it would act in the same manner towards the other, in which it would do no more than to comply faithfully with the obligations inherent to neutrality. It is very far from my purpose to teach the government of the United States what these obligations are; but I, however, deem it my duty to make known to it my opinion and that of my government: that it is incompatible with them to permit one of the belligerent armies to provide itself, in its territory, with whatsoever it may require to carry on hostilities.

Vattel, speaking at paragraph 104, chapter VII, book III, of his "Law of Nations," upon the obligations of neutrality, says that "as long as a neutral nation wishes securely to enjoy the advantages of her neutrality, she must in all things show a strict impartiality towards the belligerent powers." Examining further-

more in what the impartiality consists which a neutral power is obliged to observe, he says that "it solely relates to war, and includes two articles: 1. To give no assistance when there is no obligation to give it; nor voluntarily to furnish troops, arms, ammunition, or anything of direct use in war. I do not say 'to give assistance equally,' but 'to give no assistance;' for it would be absurd that a state should at one and the same time assist two nations at war with each other; and besides, it would be impossible to do it with equality. The same things, the like number of troops, the like quantity of arms, of stores, &c., furnished in different circumstances, are no longer equivalent succors."

It is therefore evident that, according to these principles, if the government of the United States permits the French army to take from this country whatever it may require to carry on hostilities against Mexico, it does not act with the impartiality which its character of neutral imposes upon it, even though it should concede to Mexico the same privilege. Among the authorities which served as a foundation for the honorable Secretary of the Treasury for adopting the decision referred to are found, in the first place, and which I consider as the principal one, the instructions which Mr. Alexander Hamilton communicated on the 4th of August, 1793, to the collectors of customs of the United States, in consequence of the proclamation which President George Washington had issued on the 22d day of April preceding, recognizing the state of war then existing between Austria, Prussia, Sardinia, Great Britain, and the Netherlands on the one part, and France upon the other, and declaring the neutrality of the United States in the same.

In these instructions Mr. Hamilton said (American State Papers, series of Foreign Affairs, vol. 1, page 141) that "the purchasing within and exporting from the United States, by way of merchandise, articles commonly called contraband, should not be interfered with;" and, according to this principle, the purchase and exportation of the effects purchased by the French officers should not be permitted, inasmuch as they have not been made by way of merchandise, but, on the contrary, for the immediate and direct use of a belligerent army. It is well understood that the government of the United States would not be willing to prevent the sale of such articles to French merchants who would purchase them to speculate upon them by selling them to a third power, or, perhaps, to their own government, for the fear that the latter should occur, ought not to authorize a general prohibition, but that it should extend these principles to the purchase of the articles referred to by officers of the French army, and for the immediate use of the same army, is a matter which cannot be conceived of, because it is equivalent to laying aside neutrality, and to open the door to all nations that be at war, in which the United States are not a party, in order that, in exchange for a small profit, they may come to provide themselves here with whatever they may require to carry on hostilities.

The authorities of Mr. Webster, which are cited in the document annexed to the communication of the honorable the Secretary of the Treasury of the 20th of November last past, of which you are pleased to transmit me a copy, are in contrariety with the instructions of Mr. Hamilton, and there cannot be given to them, in my opinion, the same weight as to the latter, for the first are fragments of communications addressed by Mr. Webster, as Secretary of State of the United States, to Mr. Thompson, minister of the United States in Mexico, to justify the government of the United States from the complaints which that of Mexico made to it for the moral and material support which the first gave, at that time, to the insurgents of Texas. It is known that all the sympathies of the administration then existing were on the side of the insurgents, which caused it to encourage them in every way, in order to accomplish the enterprise in which they were engaged, while, at the same time, the United States called themselves neutrals in the contest. The principles laid down then by Mr. Webster had for their object to reconcile that neutrality with the aid given to

the insurgents; and assuredly, if the government of the United States should examine them now, when the circumstances are different, and when the administration is animated with a spirit of greater justice, it would not sustain them, nor would it be willing that foreign nations should adopt them as a basis in their relations with the United States, as it does not appear disposed to sustain, in this emergency, the principles which governed it then to recognize the independence of Texas much earlier than Mexico was disposed to make such a recognition.

There is an instance of a similar case in which the United States proceeded in accordance with the principles of Vattel, and the reason which they had for it holds good with the same force in the present case. Mr. Henry Wheaton, in the 16th paragraph of chapter III, of part IV of his "Elements of International Law," referring to the principles of Vattel, which I have already cited, says: "These principles were appealed to by the American government when its neutrality was attempted to be violated on the commencement of the European war of 1793, by arming and equipping vessels and enlisting men within the ports of the United States by the respective belligerent powers to cruise against each other. It was stated that if the neutral power might not, consistently with its neutrality, furnish men to either party for their aid in war, as little could either enrol them in the neutral territory."

Applying this reasoning to the present case, it follows that the United States cannot, because of its neutrality, give to France arms, munitions of war, and other articles contraband of war, neither can it permit that the French army shall come to take them from the neutral territory.

Great Britain, which adopted the American doctrine in that which relates to the enlistment of troops in its territory by a belligerent power, has been more consistent, for it also adopted the consequences which are inferred from this principle; and when it declares itself neutral in the wars between other powers, it accompanies this declaration with the prohibition that the belligerents shall not supply themselves in their ports with articles contraband of war, unless that, by special treaties, she is under the obligation of extending them to both or either of the belligerents.

President Franklin Pierce, in his message to the thirty-fourth Congress of the United States, of the 1st of September, 1855, which is another of the authorities cited by the honorable the Secretary of the Treasury, whilst he considers as a violation of the neutrality of the United States the pretensions of any of the European powers then allied against Russia to enrol troops in the territories of these same States, follows the doctrine of Mr. Webster respecting the sale of articles contraband of war made by its citizens to any one of the belligerent powers. President Pierce forgot the condition that the sale be made *by way of merchandise*, considered as indispensable by Mr. Hamilton to make it lawful. He also says that there is no law prohibiting to the citizens of the United States the sale of articles contraband of war to either of the belligerent parties; but if there be no such secondary law, there exists the natural tendency of the law of nations, which imposes such a prohibition upon the neutral powers as one of the circumstances inherent to neutrality. If the government should extend to Mexico the same principles which govern it in its relations with France, as little satisfactory as such conduct would be, because it would thus be to abandon neutrality and to furnish to the French army the means of transportation, without which it would have been obliged to remain inactive until these could arrive from Europe, giving time to the Mexican government to organize a more vigorous resistance, yet it would not have been to so great an extent as it was on refusing to Mexico the same facilities which are conceded to France.

At the commencement of February of the present year the Mexican consul at New York informed me that several merchants of that port were sending to Vera

Cruz vessels laden with provisions and other articles for the consumption of the allied army, which was then in that city. At a conference with which you favored me on the 13th of the said month of February I had the honor to inform you of these facts, and I took the liberty to suggest to you that, if the United States held the character of a neutral in the differences between Mexico and the allies, the federal government should forbid the exportation of articles contraband of war intended to give aid directly to one of the belligerents. You were pleased to reply to me that the United States did not recognize a state of war existing between Mexico and the allies. As there had been, you said, no declaration of war, they could not, for the same reason, be governed in their conduct by the rules of neutrals, for up to that time this government considered Mexico and the allies as friends, and not as belligerents. In view of such reasonable explanations, I desisted from my first suggestion, and, as was natural, I understood that the government of the United States would not object that Mexico should take from this country what she might need whilst the state of things then existing should continue; and provided that Mexico should be permitted to make use of this right, I would make no opposition to the exercise of the same being granted to the allies.

Shortly afterwards the circumstance arose that Mexico purchased some arms in New York, which the agent commissioned to make this purchase desired to ship to a Mexican port which the honorable the Secretary of the Treasury had closed to the commerce of the United States, in violation of the rights of Mexico and in contravention of the stipulations of the treaty of friendship, navigation, and commerce, which binds the United States to Mexico, as I had the honor to make known to you in the notes which I addressed you on the 23d of July and the 10th of September, 1861. The circumstance that, in accordance with the instructions of the honorable the Secretary of the Treasury, his permit was necessary, in order that the custom-house of New York might clear vessels to the said port, was the only cause of my application to the Treasury Department, soliciting extra officially this permit. Upon doing so I determined simply to make known that these arms were for Mexico and not for the insurgents of the United States, believing that this would be sufficient for the honorable the Secretary of the Treasury to grant the proper clearance. The aspect of the affairs of Mexico had then changed with respect to that in which it was in February last. The difficulties existing were then no longer between Mexico and the European allies, but between Mexico and France; and although the war existed in fact, it had not been declared, neither did I know that such a declaration, which had not been made, had been communicated to the government of the United States, nor that this government had taken official notice of such a war, which had begun like a filibustering enterprise, in contravention of the most trivial principles of the law of nations, and least of all did I know that this government intended to remain neutral in this war. Had I known this I should not have dared to inform it of a transaction which had been entered into to the loss of its rights as a neutral, nor much less to ask it to authorize it in violation of the duties which its neutrality imposed upon it. My duty would have been to advise the agent who came to purchase the arms to go and seek them elsewhere, for here they could not be obtained without loss to the rights of the United States, which I have ever been disposed to respect in the most scrupulous manner. The honorable the Secretary of the Treasury at first showed himself willing to concede the permit asked for; he asked me for the list of the effects which were to be sent to Mexico, and, upon showing it to him, it appeared to him that the number, 36,000 muskets, was too great a one, and he said to me that he would only give the permit for exporting them in case that the honorable the Secretaries of the Navy and War should make no objection to the exportation of the arms. The honorable the Secretary of the Navy

made none, and the Secretary of War said that "he refused to relax the order previously issued forbidding the exportation of arms."

Neither the collector of the customs of New York, nor the honorable the Secretary of the Treasury, seemed to be aware of the order to which the honorable the Secretary of War referred; but his decision in the present case was sufficient for them to refuse in the most positive and absolute manner the clearance of the muskets purchased by Mexico. In vain did I endeavor to show to both the honorable Secretaries that these arms were Prussian muskets, flint-locks, subsequently altered to percussion locks, and of such a quality that the army of the United States would never use them. All my efforts were in vain; and the impression which was left to me, as the result of my exertions, was that the government of the United States had opposed the departure of the arms, not because it believed that the occasion might arise when it would need them for its army—inasmuch as there was in the stores of New York a larger number and of a very superior quality—but to avoid complications with France, which, it was feared, would be consequent upon the clearance of the arms to a Mexican port. I was finally confirmed in this opinion upon learning that subsequently to my said exertions the honorable Secretary of the Treasury expressly notified the collector of the custom-house of New York on no account to clear the arms aforesaid, and that the same custom-house has cleared, subsequently to these exertions, arms to ports which are not Mexican ports. I felt, therefore, that there had not been towards me the sufficient frankness to tell me the true cause why the clearance of the arms purchased by Mexico was denied, which would have saved me many steps; for, from the moment it should have been communicated to me that the United States were neutrals in the war between France and Mexico, and that the clearance of these arms was not compatible with the duties which their neutrality imposed upon them, I should have considered the affair as concluded, conceding all the reason to this government. It is, therefore, easy to understand how great was my surprise upon learning that when France came to purchase articles contraband of war in this country, when it has made of it the base whence it supplies its invading army, in a war in which I had been made to understand that the United States were neutrals, the honorable Secretary of the Treasury, relying upon authorities in my opinion totally insufficient, should have conceded to France the same thing which he so peremptorily refused to Mexico. For Mexico it is the same thing that to it should be denied what is permitted to France, by order of the honorable Secretary of War, or by the decision of any other honorable Secretary; she cannot enter into the examination of the reasons which may have caused such an order, and she can only see the palpable and incontrovertible fact that, whilst to France it is permitted to supply herself in the market of the United States with whatever she requires to carry on her war against Mexico, without excepting the articles contraband of war, to Mexico is prohibited the exportation of the only article which she needed, and the only one she had purchased in this country. As I am considering the question under the point of view of the right only, and as I understand that the United States are neutrals in the war between Mexico and France, I refrain from entering into other considerations which would present the conduct of the United States in a light still more unfavorable. The gravity of the present case, which affects so directly the rights and interests of Mexico, causes me to believe that so soon as my government shall be informed of what has occurred in this respect, it will send me precise instructions by which to abide.

Then I shall again have the honor to communicate with you upon this same affair. For the present, I have only taken the liberty to lay before you the considerations which precede, because I do not desire that my silence be taken as an indication of acquiescence in the determination contained in your note, to which I reply.

I avail myself of this opportunity to renew to you, sir, the assurances of my very distinguished consideration.

M. ROMERO.

Hon. WILLIAM H. SEWARD, &c., &c., &c.

Mr. Seward to Mr. Romero.

DEPARTMENT OF STATE,
Washington, December 15, 1862.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the reception of the note which was addressed to him by his excellency Mr. M. Romero, chargé d'affaires of the republic of Mexico, on the 10th of December instant, in which Mr. Romero states his objections to the decision of this government which permits the clearance of vessels from New York, carrying cargoes of certain wagons and other merchandise purchased and designed, as Mr. Romero says, for the use of the French forces in Mexico. Mr. Romero assumes that this decision manifests partiality on the part of this government towards France.

The undersigned has the honor to inform Mr. Romero that the trade of the United States is regulated by treaties and laws which are equal in regard to France and to Mexico, and to all other nations, without any exceptions, whether they are mutually at peace or engaged in war; that whatever merchandise is allowed to be cleared for or on account of French subjects or of the French government, is equally allowed to be cleared for the citizens or for the government of Mexico, and for all other nations.

Mr. Romero builds his argument upon the fact that clearances of arms said to be designed for the use of the Mexican government were denied in its war with France, while clearances of wagons designed for the use of the French government in the same war are allowed.

Mr. Romero is respectfully informed that prohibition of the shipment of arms, in the case referred to, was a general prohibition, including all other nations as well as Mexico, on the ground of the military necessities of the United States, which, while engaged in suppressing a formidable insurrection, cannot consent that fire-arms of any kind shall be sent out of the country as merchandise.

For these reasons—first, because the government may need all such arms; and, secondly, that they might fall into the hands of the insurgents—neither the French, who are at war with Mexico, nor any other nation which is at peace with the United States, no matter what its condition or its situation, could now be allowed to export arms of any sort from this country. Mr. Romero implies, probably with truth, that wagons are as necessary and will be as useful to the French as fire-arms would be to the Mexicans. But the pertinency of the argument is not apparent, insomuch as the shipment of arms is denied to Mexico on the ground, not of want of them on her part as a belligerent, but on the ground of the military situation of the United States; and, on the other hand, the wagons are allowed to be shipped, not on the ground that France wants them as a belligerent, but on the ground that the military situation of the United States does not demand an inhibition.

The republic of Mexico enjoys the sincere friendship and good will of the United States, and they lament the war which has arisen between that republic and France. They are not, however, a party to the war, and since it has unhappily occurred, they can act in regard to it only on the principles which have always governed their conduct in similar cases. The trade of the United States, according to these principles, is left free to both nations, just as if they were at peace with each other, and no restrictions are imposed upon it to the favor or prejudice of either nation.

The argument of the Secretary of the Treasury, which has been already submitted to Mr. Romero, renders it unnecessary to say more to elucidate the settled and traditional policy of the country. It is not easy to see how that policy could be changed so as to conform to the views of Mr. Romero, without destroying all neutral commerce whatsoever. If Mexico shall prescribe to us what merchandise we shall not sell to French subjects, because it may be employed in military operations against Mexico, France must equally be allowed to dictate to us what merchandise we shall allow to be shipped to Mexico, because it might be belligerently used against France. Every other nation which is at war would have a similar right, and every other commercial nation would be bound to respect it as much as the United States. Commerce, in that case, instead of being free or independent, would exist only at the caprice of war.

The undersigned, in thus expressing to Mr. Romero the views of this government upon the question which Mr. Romero has submitted, does not at all desire to conclude him from the further presentation of the subject, which he promises to make after he shall have received the instructions upon the subject from his government.

The undersigned avails himself of this occasion to offer to Mr. Romero a renewed assurance of his high consideration.

WILLIAM H. SEWARD.

Señor Don MATIAS ROMERO, &c., &c., &c.

Mr. Romero to Mr. Seward.

[Translation.]

MEXICAN LEGATION IN THE UNITED STATES OF AMERICA,
Washington, December 20, 1862.

The undersigned, chargé d'affaires of the United Mexican States, has had the honor to receive the note which the honorable William H. Seward, Secretary of State of the United States of America, was pleased to address to him on the 15th of the present month, in reply to the communication of the undersigned of the 10th instant, in which he stated the reasons which caused him to consider as partial in favor of France the conduct followed by the government of the United States in permitting the emissaries of the French army to purchase and export from the ports of this country whatever that army requires to carry out the military operations against Mexico, in which it is engaged, while at the same time the same privilege has been denied to the Mexican republic.

In his note referred to, the honorable Secretary of State is pleased to inform the undersigned that "the trade of the United States is regulated by treaties and laws which are equal in regard to France and to Mexico, and to all other nations, without any exception, whether they are mutually at peace or engaged in war." The undersigned was not unaware that the United States have the obligation to regulate their trade with friendly nations, by the stipulations to which they have bound themselves in the treaties which bind them to these nations, and he precisely had these considerations present when he wrote his note of the 10th instant, and in it he only proposed to himself to exact from the government of the United States the fulfilment of a duty which the United States contracted towards Mexico, in the treaty of the 5th of April, 1831, at present in force between both powers. The obligation imposed by said treaty upon the two contracting governments appeared so clear to the undersigned that he did not deem it necessary to remind the honorable Secretary of State of the articles in which it is contained; but inasmuch as he is informed that the trade of the United States is regulated by treaties, he deems it his duty to be more precise upon asking the fulfilment of the stipulations of these treaties.

Article 16th of the treaty of the 5th of April stipulates that "it shall be lawful for the citizens of the United States of America and of the United Mexican States, respectively, to sail with their vessels with all manner of security and liberty, no distinction being made who are the owners of the merchandise laden thereon, from any port to the places of those who now are or may hereafter be at enmity with the United States of America or with the United Mexican States. 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."

So ample a liberty of trading is found shortly after wisely restricted in article 18th, which says: "This liberty of commerce and navigation shall extend to all kinds of merchandise, excepting those only which are distinguished by the name of contraband of war." * * * * *

If it then appears that the articles purchased in the United States by the emissaries of the French army, and carried to Vera Cruz in vessels of the United States, are of the character of those called contraband of war, it is indubitable that the commerce and navigation of such articles are unlawful, agreeably to the stipulations of the treaty which binds the United States to Mexico.

The articles referred to have consisted principally of mules and wagons, and to these the undersigned exclusively referred in his last note upon the subject. The said 18th article of the treaty of the 5th of April enumerates the articles prohibited which are comprehended under the qualification of contraband of war, and in the third section it mentions expressly *horses with their furniture*; and the fourth terminates by saying, "or of any other materials manufactured, prepared, and formed expressly to make war by sea or land."

The undersigned deems it altogether unnecessary to make any effort to show that the mules as well as the wagons which form the means of transportation, without which the military operations are impossible, are included among the articles which the treaty enumerates as of the character of contraband of war.

From what has been manifested, it appears that Mexico has not thought of perscribing to the United States what merchandise they may sell to French subjects, and what are those they cannot sell to them, as the honorable Secretary of States seems to have understood it.

It (Mexico) has only desired that the United States should comply with one of the obligations which the treaty which binds them to Mexico imposes upon them, and that they do not permit a trade which the treaty referred to declares to be illegal. This just claim is exactly the same which the government of the United States has been making for several months upon the British government, and the undersigned cannot have been less than greatly surprised upon seeing that what this government deems it just to exact from that of Great Britain, it should not deem it just to concede to that of Mexico. As the despatches upon which the opinion of the undersigned is founded are familiar to the honorable Secretary of State, he abstains from citing the precise text of them, which have been recently published by the Department of State with the President's message of the 1st instant. In adopting this course, the undersigned has been also governed by the desire of not extending too much the present note; but if the honorable Secretary of State should question this assertion, the undersigned will have the honor to further discuss this subject more lengthily hereafter in another communication.