

religious toleration had made all comers welcome, and under these protections the Chinese in considerable numbers had made their lodgment upon our soil.

The Burlingame treaty undertakes to deal with this situation, and its fifth and sixth articles embrace its most important provisions in this regard and the main stipulations in which the Chinese Government has secured an obligatory protection of its subjects within our territory. They read as follows:

ART. V. The United States of America and the Emperor of China cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from the one country to the other for purposes of curiosity, of trade, or as permanent residents. The high contracting parties therefore join in reprobating any other than an entirely voluntary emigration for these purposes. They consequently agree to pass laws making it a penal offense for a citizen of the United States or Chinese subjects to take Chinese subjects either to the United States or to any other foreign country, or for a Chinese subject or citizen of the United States to take citizens of the United States to China or to any other foreign country, without their free and voluntary consent, respectively.

ART. VI. Citizens of the United States visiting or residing in China shall enjoy the same privileges, immunities, or exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation, and, reciprocally, Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities, and exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation. But nothing herein contained shall be held to confer naturalization upon citizens of the United States in China, nor upon the subjects of China in the United States.

An examination of these two articles in the light of the experience then influential in suggesting their "necessity" will show that the fifth article was framed in hostility to what seemed the principal mischief to be guarded against, to wit, the introduction of Chinese laborers by methods which should have the character of a forced and servile importation, and not of a voluntary emigration of freemen seeking our shores upon motives and in a manner consonant with the system of our institutions and approved by the experience of the nation. Unquestionably the adhesion of the Government of China to these liberal principles of freedom in emigration, with which we were so familiar and with which we were so well satisfied, was a great advance toward opening that Empire to our civilization and religion, and gave promise in the future of greater and greater practical results in the diffusion throughout that great population of our arts and industries, our manufactures, our material improvements, and the sentiments of government and religion which seem to us so important to the welfare of mankind. The first clause of this article secures this acceptance by China of the American doctrines of free migration to and fro among the peoples and races of the earth.

The second clause, however, in its reprobation of "any other than an entirely voluntary emigration" by both the high contracting parties,

and in the reciprocal obligations whereby we secured the solemn and unqualified engagement on the part of the Government of China "to pass laws making it a penal offense for a citizen of the United States or Chinese subjects to take Chinese subjects either to the United States or to any other foreign country without their free and voluntary consent," constitutes the great force and value of this article. Its importance both in principle and in its practical service toward our protection against servile importation in the guise of immigration can not be overestimated. It commits the Chinese Government to active and efficient measures to suppress this iniquitous system, where those measures are most necessary and can be most effectual. It gives to this Government the footing of a treaty right to such measures and the means and opportunity of insisting upon their adoption and of complaint and resentment at their neglect. The fifth article, therefore, if it fall short of what the pressure of the later experience of our Pacific States may urge upon the attention of this Government as essential to the public welfare, seems to be in the right direction and to contain important advantages which once relinquished can not be easily recovered.

The second topic which interested the two Governments under the actual condition of things which prompted the Burlingame treaty was adequate protection, under the solemn and definite guaranties of a treaty, of the Chinese already in this country and those who should seek our shores. This was the object, and forms the subject of the sixth article, by whose reciprocal engagement the citizens and subjects of the two Governments, respectively, visiting or residing in the country of the other are secured the same privileges, immunities, or exemptions there enjoyed by the citizens or subjects of the most favored nations. The treaty of 1858, to which these articles are made supplemental, provides for a great amount of privilege and protection, both of person and property, to American citizens in China, but it is upon this sixth article that the main body of the treaty rights and securities of the Chinese already in this country depends. Its abrogation, were the rest of the treaty left in force, would leave them to such treatment as we should voluntarily accord them by our laws and customs. Any treaty obligation would be wanting to restrain our liberty of action toward them, or to measure or sustain the right of the Chinese Government to complaint or redress in their behalf.

The lapse of ten years since the negotiation of the Burlingame treaty has exhibited to the notice of the Chinese Government, as well as to our own people, the working of this experiment of immigration in great numbers of Chinese laborers to this country, and their maintenance here of all the traits of race, religion, manners, and customs, habitations, mode of life, segregation here, and the keeping up of the ties of their original home, which stamp them as strangers and sojourners, and not as incorporated elements of our national life and growth. This experience may naturally suggest the reconsideration of the subject as dealt with by the

Burlingame treaty, and may properly become the occasion of more direct and circumspect recognition, in renewed negotiations, of the difficulties surrounding this political and social problem. It may well be that, to the apprehension of the Chinese Government no less than our own, the simple provisions of the Burlingame treaty may need to be replaced by more careful methods, securing the Chinese and ourselves against a larger and more rapid infusion of this foreign race than our system of industry and society can take up and assimilate with ease and safety. This ancient Government, ruling a polite and sensitive people, distinguished by a high sense of national pride, may properly desire an adjustment of their relations with us which would in all things confirm and in no degree endanger the permanent peace and amity and the growing commerce and prosperity which it has been the object and the effect of our existing treaties to cherish and perpetuate.

I regard the very grave discontents of the people of the Pacific States with the present working of the Chinese immigration, and their still graver apprehensions therefrom in the future, as deserving the most serious attention of the people of the whole country and a solicitous interest on the part of Congress and the Executive. If this were not my own judgment, the passage of this bill by both Houses of Congress would impress upon me the seriousness of the situation, when a majority of the representatives of the people of the whole country had thought fit to justify so serious a measure of relief.

The authority of Congress to terminate a treaty with a foreign power by expressing the will of the nation no longer to adhere to it is as free from controversy under our Constitution as is the further proposition that the power of making new treaties or modifying existing treaties is not lodged by the Constitution in Congress, but in the President, by and with the advice and consent of the Senate, as shown by the concurrence of two-thirds of that body. A denunciation of a treaty by any government is confessedly justifiable only upon some reason both of the highest justice and of the highest necessity. The action of Congress in the matter of the French treaties in 1798, if it be regarded as an abrogation by this nation of a subsisting treaty, strongly illustrates the character and degree of justification which was then thought suitable to such a proceeding. The preamble of the act recites that the—

Treaties concluded between the United States and France have been repeatedly violated on the part of the French Government, and the just claims of the United States for reparation of the injuries so committed have been refused, and their attempts to negotiate an amicable adjustment of all complaints between the two nations have been repelled with indignity.

And that—

Under authority of the French Government there is yet pursued against the United States a system of predatory violence, infracting the said treaties and hostile to the rights of a free and independent nation.

The enactment, as a logical consequence of these recited facts, declares—

That the United States are of right freed and exonerated from the stipulations of the treaties and of the consular convention heretofore concluded between the United

States and France, and that the same shall not henceforth be regarded as legally obligatory on the Government or citizens of the United States.

The history of the Government shows no other instance of an abrogation of a treaty by Congress.

Instances have sometimes occurred where the ordinary legislation of Congress has, by its conflict with some treaty obligation of the Government toward a foreign power, taken effect as an *infraction* of the treaty, and been judicially declared to be operative to that result; but neither such legislation nor such judicial sanction of the same has been regarded as an *abrogation*, even for the moment, of the treaty. On the contrary, the treaty in such case still subsists between the governments, and the casual infraction is repaired by appropriate satisfaction in maintenance of the treaty.

The bill before me does not enjoin upon the President the abrogation of the entire Burlingame treaty, much less of the principal treaty of which it is made the supplement. As the power of modifying an existing treaty, whether by adding or striking out provisions, is a part of the treaty-making power under the Constitution, its exercise is not competent for Congress, nor would the assent of China to this partial abrogation of the treaty make the action of Congress in thus procuring an amendment of a treaty a competent exercise of authority under the Constitution. The importance, however, of this special consideration seems superseded by the principle that a denunciation of a part of a treaty not made by the terms of the treaty itself separable from the rest is a denunciation of the whole treaty. As the other high contracting party has entered into no treaty obligations except such as include the part denounced, the denunciation by one party of the part necessarily liberates the other party from the whole treaty.

I am convinced that, whatever urgency might in any quarter or by any interest be supposed to require an instant suppression of further immigration from China, no reasons can require the immediate withdrawal of our treaty protection of the Chinese already in this country, and no circumstances can tolerate an exposure of our citizens in China, merchants or missionaries, to the consequences of so sudden an abrogation of their treaty protection. Fortunately, however, the actual recession in the flow of the emigration from China to the Pacific Coast, shown by trustworthy statistics, relieves us from any apprehension that the treatment of the subject in the proper course of diplomatic negotiations will introduce any new features of discontent or disturbance among the communities directly affected. Were such delay fraught with more inconveniences than have ever been suggested by the interests most earnest in promoting this legislation, I can not but regard the summary disturbance of our existing treaties with China as greatly more inconvenient to much wider and more permanent interests of the country.

I have no occasion to insist upon the more general considerations of interest and duty which sacredly guard the faith of the nation, in whatever form of obligation it may have been given. These sentiments animate

the deliberations of Congress and pervade the minds of our whole people. Our history gives little occasion for any reproach in this regard; and in asking the renewed attention of Congress to this bill I am persuaded that their action will maintain the public duty and the public honor.

R. B. HAYES.

PROCLAMATION.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
A PROCLAMATION.

Whereas the final adjournment of the Forty-fifth Congress without making the usual and necessary appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and without making the usual and necessary appropriations for the support of the Army for the same fiscal year, presents an extraordinary occasion requiring the President to exercise the power vested in him by the Constitution to convene the Houses of Congress in anticipation of the day fixed by law for their next meeting:

Now, therefore, I, Rutherford B. Hayes, President of the United States, do, by virtue of the power to this end in me vested by the Constitution, convene both Houses of Congress to assemble at their respective chambers at 12 o'clock noon on Tuesday, the 18th day of March instant, then and there to consider and determine such measures as in their wisdom their duty and the welfare of the people may seem to demand.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

[SEAL.] Done at the city of Washington, this 4th day of March, A. D. 1879, and of the Independence of the United States of America the one hundred and third.

R. B. HAYES.

By the President:

WM. M. EVARTS, *Secretary of State.*

SPECIAL SESSION MESSAGE.

WASHINGTON, *March 19, 1879.*

Fellow-Citizens of the Senate and House of Representatives:

The failure of the last Congress to make the requisite appropriations for legislative and judicial purposes, for the expenses of the several Executive Departments of the Government, and for the support of the Army has made it necessary to call a special session of the Forty-sixth Congress.

The estimates of the appropriations needed which were sent to Congress by the Secretary of the Treasury at the opening of the last session are renewed, and are herewith transmitted to both the Senate and the House of Representatives.

Regretting the existence of the emergency which requires a special session of Congress at a time when it is the general judgment of the country that the public welfare will be best promoted by permanency in our legislation and by peace and rest, I commend these few necessary measures to your considerate attention.

RUTHERFORD B. HAYES.

SPECIAL MESSAGES.

WASHINGTON, *March 20, 1879.*

To the Senate of the United States:

In compliance with the resolution of the Senate of the 3d instant, calling for the reports of Gustavus Goward on the Samoan Islands, I transmit herewith a report from the Secretary of State, with the accompanying papers.

R. B. HAYES.

EXECUTIVE MANSION, *April 18, 1879.*

To the Senate of the United States:

In compliance with a resolution of the Senate of the 15th instant, I transmit herewith a copy of the report of the commission appointed by the President on the 15th of March, 1872, relating to the different inter-oceanic canal surveys and the practicability of the construction of a ship canal across this continent.

R. B. HAYES.

EXECUTIVE MANSION, *May 15, 1879.*

To the Senate of the United States:

In response to a resolution of the Senate of the 7th instant, requesting information in reference to an alleged occupation of a portion of the Indian Territory by white settlers, etc., I transmit herewith a copy of my proclamation dated April 26, 1879;* also copies of the correspondence and papers on file and of record in the Department of the Interior and the War Department touching the subject of the resolution.

R. B. HAYES.

*See pp. 547-548.

EXECUTIVE MANSION, *May 26, 1879.**To the Senate of the United States:*

In response to a resolution of the Senate of the 14th instant, I transmit herewith a communication* from the Secretary of the Interior and accompanying papers.

R. B. HAYES.

EXECUTIVE MANSION, *June 5, 1879.**To the Senate and House of Representatives:*

I transmit herewith the "proceedings and report" of the board of officers convened by Special Orders, No. 78, Headquarters of the Army, Washington, April 12, 1878, in the case of Fitz John Porter. The report of the board was made in March last, but the official record of the proceedings did not reach me until the 3d instant.

I have given to this report such examination as satisfies me that I ought to lay the proceedings and conclusions of the board before Congress. As I am without power, in the absence of legislation, to act upon the recommendations of the report further than by submitting the same to Congress, the proceedings and conclusions of the board are transmitted for the information of Congress and such action as in your wisdom shall seem expedient and just.

R. B. HAYES.

WASHINGTON, *June 13, 1879.**To the House of Representatives:*

I transmit herewith, in compliance with the resolution of the House of Representatives of the 29th ultimo, a report of the Secretary of State relative to the steps taken by this Government to promote the establishment of an interoceanic canal across or near the Isthmus of Darien.

R. B. HAYES.

WASHINGTON, *June 23, 1879.**To the Senate of the United States:*

I transmit herewith to the Senate a report from the Secretary of State, in response to a resolution of that body of the 20th instant, calling for the proceedings and accompanying papers of the International Silver Conference held in Paris in 1878.

R. B. HAYES.

EXECUTIVE MANSION, *June 30, 1879.**To the Senate and House of Representatives:*

The bill making provision for the payment of the fees of United States marshals and their general deputies, which I have this day returned to

*Relating to lands in the Indian Territory acquired by the treaties of 1866.

the House of Representatives, in which it originated, with my objections,* having upon its reconsideration by that body failed to become a law, I respectfully call your attention to the immediate necessity of making some adequate provision for the due and efficient execution by the marshals and deputy marshals of the United States of the constant and important duties enjoined upon them by the existing laws. All appropriations to provide for the performance of these indispensable duties expire to-day. Under the laws prohibiting public officers from involving the Government in contract liabilities beyond actual appropriations, it is apparent that the means at the disposal of the executive department for executing the laws through the regular ministerial officers will after to-day be left inadequate. The suspension of these necessary functions in the orderly administration of the first duties of government for the shortest period is inconsistent with the public interests, and at any moment may prove inconsistent with the public safety.

It is impossible for me to look without grave concern upon a state of things which will leave the public service thus unprovided for and the public interests thus unprotected, and I earnestly urge upon your attention the necessity of making immediate appropriations for the maintenance of the service of the marshals and deputy marshals for the fiscal year which commences to-morrow.

RUTHERFORD B. HAYES.

WASHINGTON, *July 1, 1879.**To the Senate of the United States:*

In answer to a resolution of the Senate of the 28th June, 1879, requesting a copy of any correspondence which may have passed between the Department of State and the Republic of Mexico in regard to the proposed Austin-Topolovampo Railroad survey across the northern States of that country, I transmit herewith the report of the Secretary of State upon the subject.

R. B. HAYES.

VETO MESSAGES.

EXECUTIVE MANSION, *April 29, 1879.**To the House of Representatives:*

I have maturely considered the important questions presented by the bill entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1880, and for other purposes," and I now return it to the House of Representatives, in which it originated, with my objections to its approval.

The bill provides in the usual form for the appropriations required

*See pp. 545-547.



for the support of the Army during the next fiscal year. If it contained no other provisions, it would receive my prompt approval. It includes, however, further legislation, which, attached, as it is, to appropriations which are requisite for the efficient performance of some of the most necessary duties of the Government, involves questions of the gravest character. The sixth section of the bill is amendatory of the statute now in force in regard to the authority of persons in the civil, military, and naval service of the United States "at the place where any general or special election is held in any State." This statute was adopted February 25, 1865, after a protracted debate in the Senate, and almost without opposition in the House of Representatives, by the concurrent votes of both of the leading political parties of the country, and became a law by the approval of President Lincoln. It was reenacted in 1874 in the Revised Statutes of the United States; sections 2002 and 5528, which are as follows:

SEC. 2002. No military or naval officer, or other person engaged in the civil, military, or naval service of the United States, shall order, bring, keep, or have under his authority or control any troops or armed men at the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States or to keep the peace at the polls.

SEC. 5528. Every officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, who orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held in any State, unless such force be necessary to repel armed enemies of the United States or to keep the peace at the polls, shall be fined not more than \$5,000 and suffer imprisonment at hard labor not less than three months nor more than five years.

The amendment proposed to this statute in the bill before me omits from both of the foregoing sections the words "or to keep the peace at the polls." The effect of the adoption of this amendment may be considered—

First. Upon the right of the United States Government to use military force to keep the peace at the elections for Members of Congress; and

Second. Upon the right of the Government, by civil authority, to protect these elections from violence and fraud.

In addition to the sections of the statute above quoted, the following provisions of law relating to the use of the military power at the elections are now in force:

SEC. 2003. No officer of the Army or Navy of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State.

SEC. 5529. Every officer or other person in the military or naval service who, by force, threat, intimidation, order, advice, or otherwise, prevents, or attempts to prevent, any qualified voter of any State from freely exercising the right of suffrage at any general or special election in such State shall be fined not more than \$5,000 and imprisoned at hard labor not more than five years.

SEC. 5530. Every officer of the Army or Navy who prescribes or fixes, or attempts to prescribe or fix, whether by proclamation, order, or otherwise, the qualifications of

voters at any election in any State shall be punished as provided in the preceding section.

SEC. 5531. Every officer or other person in the military or naval service who, by force, threat, intimidation, order, or otherwise, compels, or attempts to compel, any officer holding an election in any State to receive a vote from a person not legally qualified to vote, or who imposes, or attempts to impose, any regulations for conducting any general or special election in a State different from those prescribed by law, or who interferes in any manner with any officer of an election in the discharge of his duty, shall be punished as provided in section 5529.

SEC. 5532. Every person convicted of any of the offenses specified in the five preceding sections shall, in addition to the punishments therein severally prescribed, be disqualified from holding any office of honor, profit, or trust under the United States; but nothing in those sections shall be construed to prevent any officer, soldier, sailor, or marine from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

The foregoing enactments would seem to be sufficient to prevent military interference with the elections. But the last Congress, to remove all apprehension of such interference, added to this body of law section 15 of an act entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1879, and for other purposes," approved June 18, 1878, which is as follows:

SEC. 15. From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States, as a *posse comitatus* or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress; and no money appropriated by this act shall be used to pay any of the expenses incurred in the employment of any troops in violation of this section; and any person willfully violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine not exceeding \$10,000 or imprisonment not exceeding two years, or by both such fine and imprisonment.

This act passed the Senate, after full consideration, without a single vote recorded against it on its final passage, and, by a majority of more than two-thirds, it was concurred in by the House of Representatives.

The purpose of the section quoted was stated in the Senate by one of its supporters as follows:

Therefore I hope, without getting into any controversy about the past, but acting wisely for the future, that we shall take away the idea that the Army can be used by a general or special deputy marshal, or any marshal, merely for election purposes, as a posse, ordering them about the polls or ordering them anywhere else, when there is an election going on, to prevent disorders or to suppress disturbances that should be suppressed by the peace officers of the State; or, if they must bring others to their aid they should summon the unorganized citizens, and not summon the officers and men of the Army as a *posse comitatus* to quell disorders, and thus get up a feeling which will be disastrous to peace among the people of the country.

In the House of Representatives the object of the act of 1878 was stated by the gentleman who had it in charge in similar terms. He said:

But these are all minor points and insignificant questions compared with the great principle which was incorporated by the House in the bill in reference to the use