

# PAPERS

RELATING TO THE

# FOREIGN RELATIONS

OF

The United States,

TRANSMITTED TO CONGRESS,

WITH THE ANNUAL MESSAGE OF THE PRESIDENT,

DECEMBER 6, 1875.

PRECEDED BY A

LIST OF PAPERS AND FOLLOWED BY AN INDEX OF  
PERSONS AND SUBJECTS.

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VOLUME II.

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WASHINGTON:  
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1875.

or each of the distinct administrations, even when there are several of the latter in the same state, be entitled to a separate vote?

The International Telegraphic Bureau having addressed the administrations of the different states, for the purpose of making inquiry as to their opinions, almost all of the administrations have expressed the opinion that it would be advisable to profit by the information and the special data which each of the various administrations may be able to furnish at the conference, and that each of these administrations is, moreover, the sole judge of the measures which may be adapted to it. The imperial government is disposed to accept these principles. The result of this would be that each of the telegraphic administrations acting independently, would be entitled to a voice in the deliberations of *administrative* conferences, with the proviso that, in cases where different administrations, belonging to the same government, were concerned, each of these administrations should be specially represented, and that the communication relative to the persons selected as such representatives should be sent, diplomatically, to the government in whose country the conference should meet, previously to the opening of its sessions.

In consequence of the foregoing, I have the honor to beg you, Mr. Secretary of State, to be pleased to communicate to me the views of the Government of the United States in relation to this matter.

Be pleased to accept, &c.,

VOIGT.

No. 516.

*Mr. Fish to Mr. Voigt.*

DEPARTMENT OF STATE,

*Washington, May 18, 1875.*

SIR: With reference to the correspondence which has taken place between this Department and the Legation of Russia on the subject of the telegraphic convention which is to meet in St. Petersburg next month, I have the pleasure to inform you that the President has authorized Mr. Schuyler to appear on that occasion. That gentleman has this day been informed by cable of his appointment, and similar information will be forwarded by the post of to-morrow.

Accept, &c.,

HAMILTON FISH.

SPAIN.

No. 517.

*Mr. Cushing to Mr. Fish.*

No. 142.]

LEGATION OF THE UNITED STATES,

*Madrid, November 4, 1874. (Received November 27.)*

SIR: I have not, thus far, written to you anything on the subject of emancipation in Cuba. There is, indeed, little to say, and that little chiefly of a negative character.

The triumvirate, who dethroned Queen Isabel, and in the act acceded to the possession of supreme power in Spain, and their principal adherents, had been pronounced advocates of radical reforms in the political and social condition of Cuba.

In the "Collection of reports, memoirs, plans, and antecedents touching the government of the island of Cuba," published in 1873-74 by order of the Spanish government, a copy of which was transmitted to the Department by Mr. Adee soon after its publication, (see my No. 82,) you will find the recommendations of General Serrano on the subject, suggesting reforms which, if seasonably adopted, might have prevented the calamities which have since fallen upon Cuba. He repeated these views in the senate.

General Prim, we know, went further still, even to the point of thinking seriously of conceding independence to Cuba. Indeed, his assassination, which still remains unpunished, was due, there is too much reason to believe, to the enmities excited by the liberality of his views concerning Cuba.

The government of King Amadeo, it is certain, decidedly favored emancipation in Cuba; and the belief is very general here that the same malefic interests which produced the premature death of Prim also brought about the conflict between King Amadeo and his ministers, and his consequent abdication.

The republicans, who succeeded to power and held it for ten months, had made zealous profession, while in opposition, of emancipation opinions and purposes; and the most conspicuous among them had been members of the Emancipation Society of Madrid; but they wanted courage or firmness to attempt anything in that direction when the power was in their hands.

The contradiction between their previous professions and their actual performance in this respect is set forth in detail, and with great positiveness, in the excellent work of D. Rafael de la Labra, to which allusion is made in my No. 83,\* and which I shall have occasion to speak of more particularly at an early day, in a contemplated dispatch on the subject of Puerto Rico.

Remains the question of the attitude of the present government, with the same General Serrano of its head, which may be described as an attitude of good intentions, with absolute impossibility of practical action.

In order to understand this point, it has been my aim to confer fully with the most undoubted and characterized persons of emancipation opinions to be found in Madrid. This I have done.

These persons assure me that at the present moment they think all attempts at action, or even agitation, would not only be vain but prejudicial even. The government, they say, is powerless in this respect, in view of what may be considered the double rebellion in Cuba, that of the creoles in the eastern department and that of the Peninsulars in the western; and they say, further, that it would require a larger army from Spain to enforce the submission of the latter than of the former.

In this view it is that the Emancipation Society itself is at the present time quiescent and silent, awaiting the arrival of some change in political circumstances which may enable it to resume its public labors and manifestations.

In these circumstances it is difficult to see how anything in this relation can be usefully done by the minister of the United States.

\* See Foreign Relations for 1874, p. 907.

If, indeed, the only serious question now pending between the two governments were satisfactorily disposed of, either by arbitration or otherwise, we might do much in Spain, not only to forward our own interests, but in the general cause of humanity and public freedom. The conflicting jealousies of European Powers at Madrid would leave a noble part for us to play if our hands were unincumbered.

I have, &c.,

C. CUSHING.

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No. 518.

*Mr. Cushing to Mr. Fish.*

No. 190.]

LEGATION OF THE UNITED STATES,

*Madrid, December 17, 1874. (Received January 26, 1875.)*

SIR: I have noted from time to time, for the purpose of communicating them to you, several incidents bearing on the subject of neutral rights and obligations, which I proceed briefly now to submit:

1. So soon as the great European powers, acting under the impulsion, or at any rate in sequence of the initiation, of Germany, had concluded to enter upon official diplomatic relations with General Serrano's government, Spain anticipated their action in some instances by at once sending ministers to several of them, and among the rest to France. The minister selected for France was a man of rank of considerable political importance, the Marques de la Vega de Armijo, appointed in the grade of ambassador. Almost immediately on his arrival in Paris, he addressed the minister of foreign affairs, setting forth, in much detail, alleged violations of neutrality on the part of France, in furnishing, or in allowing to be furnished, assistance in various forms to the insurgent Carlists. This dispatch was so grave in its character, and so positive in its tone, as to have led to the rumor that it was delivered at the instance, and with the implied backing, of Germany. It is noticeable, at any rate, that its contents first became known in detail by means of publication in one of the semi-official journals of Berlin. Copious extracts from the document have also been published in the newspapers of Paris and London. I have endeavored to obtain a copy of this document for transmission to you, but have not succeeded in doing so. But I derive from the discussions in various public journals, and in other ways, a pretty distinct idea of the main points of this dispatch. These points are the following, namely:

(a.) Complaint that the French government has allowed supplies of arms, munitions of war, and equipments to be collected in France and passed across the line into the frontier Spanish provinces of Navarre and Guipuzcoa.

(b.) That the French government has allowed men, both Spaniards and foreigners, to be enlisted or collected in the south of France, for employment in the military service of the rebel Carlists.

(c.) That the French government has suffered Carlist juntas or committees to act publicly as such in the south of France, especially at Bayonne and Pau.

(d.) That the prefect of the department of the Lower Pyrenees, the Marquis de Nadaillac, has been encouraged or allowed to protect or favor the continuation of Carlist manifestations, intrigues, and con-

spiracies on the part of rebel Spanish agents of the Carlists, within this department. The French government has, in effect, admitted all these charges by taking efficient steps to put a stop to each of the things complained of, not only checking the transit of military supplies and of officers or soldiers, but compelling the Carlist conspirators at Pau and Bayonne to leave that part of France and pass beyond Loire. And, although Mr. de Nadaillac has not yet been superseded, yet he has been ordered to Paris, and so practically separated from official duty in his department. Meanwhile, the Duc Decazes has recently, after a long delay of months, responded to the Marques de la Vega de Armijo in a memorandum, which is said to be highly satisfactory to the Spanish government. The important issue in this controversy, and the question most debated, is whether or not it be a breach of neutrality for one government to suffer its territory to be made the seat of political conspiracy on the part of the rebels of another government, such rebels not possessing the rights of recognized belligerence, and the two governments being associated by treaties of amity. The acquiescence of the French government in the premises asserted by the Spanish government in this respect appears to me to constitute an important incident in the history of the international relations of the great powers of Europe.

2. Much has been said here, from time to time, on the subject of communications addressed to the cabinet of St. James by Mr. Comyn, minister of Spain in Great Britain, remonstrating against expeditions fitted out in the ports of that country for the service of the Carlists. It would seem that all these expeditions were for the supply of arms and munitions of war, without possessing especially military, but rather a commercial character. I am not aware what reception has been accorded to these communications of Mr. Comyn on the part of the British government.

3. As to another point, that is, the relation of the British government to Cuban *laborantes* in the West Indies, my information is more complete.

I learn, in the first place, on good authority, that, in relation to this matter, the British government has given "satisfactory assurances" to the Spanish government. My information goes no further than the general statement; but, thus far, it is confirmed by particular facts reported here with appearance of authenticity. It is stated that the active agents of the insurrection in Cuba have transferred the theater of their operations from the United States to the British islands of Jamaica and the Bahamas, and on two recent occasions the governor of Jamaica has interposed to put a stop by force to meetings of political agitation on the part of Cubans, in one of which meetings figured conspicuously the so-called General Quesada. \* \* \*

I have, &c.,

C. CUSHING.

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No. 519.

*Mr. Cushing to Mr. Fish.*

No. 207.]

LEGATION OF THE UNITED STATES,  
*Madrid, January 4, 1875. (Received February 3.)*

SIR: The counter-revolution which has just occurred in Spain is in itself one of the most interesting and singular events of our time,

and may exercise important influence over the relations between that country and the United States. You will naturally, therefore, desire to receive a circumstantial account of this occurrence.

On Tuesday, the 29th of December, information arrived at Madrid that a detachment of the army of the center, which for some months past had been actively employed in combating the Carlists in the province of Valencia, under the command of Brigadier Daban, had, on that day, at the incitation of General Martinez de Campos, pronounced at Sagunto in favor of Don Alfonso de Borbon, the son of Queen Isabel.

At this time the military and political situation was as follows:

The government of General Serrano was administering affairs as usual in apparent tranquillity and security, no event of political importance in that respect having occurred since my last dispatch on that general subject, although the war against the Carlists had been going on with various fortunes, but without any definite results of magnitude.

Meanwhile, however, General Serrano had taken the field in person as commander-in-chief of the army of the north. Various rumors had accompanied his departure from Madrid, some persons accepting as true his avowed purpose, that of subduing the insurrection by extensive military operations; others suggesting that he contemplated arrangement with the Carlists, and others again attributing to him a plan for the re-establishment of liberal monarchy in the person of Don Alfonso.

Two weeks after his departure, some little attention had been attracted to the fact that several of the leading Alfonsinos, including Mr. Cánovas del Castillo, had been arrested and imprisoned in the Carcel de Villa, and that the newspapers of the same party had been suspended, to wit: "*El Tiempo*," "*La Epoca*," "*La España Católica*," "*El Eco de España*," and "*El Diario Español*;" but incidents of this nature had occurred too frequently since the downfall of King Amadeo to make a very deep impression on the public mind.

On the morning of Wednesday, the 30th, however, appeared in the official "*Gaceta de Madrid*" a proclamation, signed by all the ministers, denouncing, as an act of rebellion, the pronunciamiento of some forces of the army of the center, headed by Generals Martinez de Campos and Jovellar, the latter formerly captain-general of Cuba, and at this time commander-in-chief of the army of the center. (See translation of this document.)

The knowledge that General Jovellar had joined the movement satisfied everybody of its seriousness, and led to the belief that it had ramifications in other corps of the army.

In fact, it soon became known that General Primo de Rivera, the captain-general of the province of Madrid, if not prepared to join the movement, was hesitating certainly, and, as it was supposed, waiting to hear from General Serrano and the army of the north. The government, presided by Mr. Sagasta, had now become aware of the gravity of the situation. The minister of war, General Serrano Bedoya, proceeded to visit the various quarters of the garrison of Madrid, containing troops to the number of about 15,000 men, and found that, while these troops were disposed to remain passive, and would not produce any disorder, yet they decidedly sympathized with the movement at Sagunto, and would not fight against the supporters of Don Alfonso. Thus the position of the government became untenable, the more so when it became ascertained, as it did toward night, that the great body of the army of the north sympathized also in the movement for Don Alfonso so positively as to induce General Serrano himself to advise acquiescence on

the part of his ministers, in consequence of which they resigned their portfolios into the hands of Captain-General Primo de Rivera. And thus the government of General Serrano fell with a feeble protest on the part of Mr. Sagasta, but without even a struggle for existence.

There is reason to think that the action of General Martinez de Campos was founded on previous consultation among officers of the army, of whom the Conde de Valnaseda is particularly mentioned.

Meanwhile the streets of Madrid were crowded with groups of persons manifesting interest and curiosity, but not committing the slightest act of disturbance in any quarter.

Late at night an extra of "*El Tiempo*" appeared, giving the first detailed account of these incidents published in Madrid.

On the next morning, that of Thursday the 31st, appeared in the official "*Gaceta de Madrid*" announcement of the establishment of a new government, as follows:

Antonio Cánovas del Castillo, president of the regency-ministry.

Alejandro Castro, minister of state.

Francisco de Cárdenas, minister of grace and justice.

Lieutenant General Joaquin Jovellar, minister of war.

Petro Salaverría, minister of hacienda.

Mariano Roca de Togores, Marqués de Molins, minister of marine.

Francisco Romero Robledo, minister of gubernacion.

Manuel de Orovio, Marqués de Orovio, minister of fomento.

Adelardo Lopez de Ayala, minister of ultramar.

This government has continued to administer affairs with apparent acceptance, or unopposed submission at least, to the present time.

At first, it is true, especially in the course of Wednesday, much solicitude prevailed in apprehension of acts of violence.

But nothing occurred to disturb the peace of the city that night or at any time thereafter. It is true that Captain-General Primo de Rivera, together with the Duque de Sexto, the new civil governor, and the Conde de Toreno, the new chief alcalde of the city, adopted the most complete precautions for the preservation of public peace; but, indeed, there has been no exhibition of disposition on the part of anybody, high or low, to disturb that peace.

On the other hand, manifestations of rejoicing, more or less spontaneous, appeared in all parts of the city for two or three days, in hangings from the balconies of the houses and in illumination of most of the windows.

There were also parade and review of the troops of the garrison of Madrid on the afternoon of Friday, in the presence of the captain-general, by whom they were addressed, and who in reponse acclaimed Don Alfonso XII. An immense concourse of spectators witnessed the scene, conspicuous among whom were many of the ladies of Madrid.

The late ministers, including Mr. Sagasta, the republicans, such as Mr. Figueras and Mr. Castelar, and the radicals, such as Mr. Ruiz Zorrilla, all go about as usual in the consciousness of perfect personal security.

The only persons who seem to suffer are the office-holders and the newspapers. The former are resigning or being removed in considerable numbers, although many of them have been requested to remain. As to the latter, it has been edifying to see that, on the very day after the suppression of so many organs of the Alfonsinos, they were restored to life again, simultaneously with the suppression of all the republican and some of the Serranist journals. \* \* \*

So little of the spirit of persecution is manifested by the triumphant Alfonsinos, that the Duque de la Torre himself, although, a ter resigning the command of the army of the north into the hands of General La Serna, he proceeded to France by way of Canfranc, yet seems to have done this, not so much from personal apprehension, as in order to avoid being the cause or pretext of opposition or even of suspicion; and it is understood that he is about to return to Madrid to live in retirement with his family, the Duquesa herself having already left the British legation to occupy a private residence in the Paseo de Recoletos. It is understood that Don Alfonso will leave Paris shortly for Marseilles, where he will find a squadron to conduct him first to Barcelona and then to Valencia, at each of which places he will remain long enough to be presented to the troops; that he will then come to Madrid to be crowned, and take the oath in force in the time of Queen Isabel; that he will then proceed to the Escorial, and from the Escorial to put himself at the head of the army of the north. A deputation of important persons, among whom are the Marqués de Molins, to represent the ministers; the Conde de Heredia Spinola, the nobility; Mr. Escobar, (of La Epoca,) the press, and the Conde de Valmaseda, the army, started yesterday for Marseilles, in order there to receive Don Alfonso and conduct him to Spain.

I annex also the important manifesto lately published in the name of Don Alfonso, setting forth the principles which are professedly to preside over his government of Spain.

I abstain at present from any further comment on the subject, except to say that the new government exhibits more signs of vitality than any other which has existed in Spain since the downfall of Queen Isabel, it having in its favor the entire military force of the country, the great body of the proprietors, titled and untitled, a large proportion of the suffering clergy, and the majority of the people, who are, for the time being, thoroughly sick of revolutionary experiments, and are anxious only for the enjoyment of peace and public order, which they have not had for a moment since the battle of Alcolea, which substituted the military triumvirate of Serrano, Prim, and Topete in the place of the constitutional monarchy of Queen Isabel.

I have, &c.,

C. CUSHING.

[Inclosure 1 in No. 207.—Translation.]

*Proclamation of the cabinet of General Serrano denouncing the movement in favor of Prince Alfonso, December 30, 1874.*

EXECUTIVE POWER OF THE REPUBLIC,  
PRESIDENCY OF THE COUNCIL OF MINISTERS.

At the very moment when the chief of the state was moving the army of the north to give decisive battle against the Carlist hosts, thus making use of the immense sacrifices which the government has exacted of the country, and which the latter has given with such noble patriotism, a small force of the army of the center, led by Generals Martinez, Campos, and Jovellar, have raised, in sight of the enemy, the seditious banner of D. Alfonso de Borbon. This act, which words fail to condemn and which seeks to initiate a fresh civil war, as though the calamities of every kind which burden the country were not already enough, has, fortunately, found no echo in the armies of the north and of Catalonia, or in any of the several military districts. The government, which has appealed, in the supreme circumstances in which the nation now is in the peninsula and in America, to all parties which bear the name of liberal to stifle in a common effort the aspirations of absolutism, holds an unquestionable right and even a sacred duty to qualify harshly and to chastise, with all rigor within its sphere, a



rebellion which, in fine, it could not favor, if it spread, any more than it could favor Carlism and demagogy, dishonoring us besides in the eyes of the civilized world. The ministry, faithful to its purposes and loyal to the solemn pledges it has given before the country and before Europe, is to-day more than ever resolved to fulfill its duty and will fulfill it.

MADRID, December 30, 1874.

The president of the council of ministers and minister of gobernacion,  
PRÁXEDES MATEO SAGASTA.  
(Signed by all the other ministers.)

[Inclosure 3 in No. 207.—Translation.]

### ANNOUNCEMENT OF THE REGENCY MINISTRY.

[From the "*Gaceta de Madrid*," December 31, 1874.]

#### DECREE.

Proclaimed by the nation and the army, the King Don Alfonso de Borbon y Borbon, the case has arrived for the use of the powers which, by royal decree of the 22d of August, 1873, were conferred upon me. In virtue thereof, and in the name of His Majesty the King, I hereby decree as follows:

The regency-ministry, which is to govern the kingdom until the arrival of the King Don Alfonso in Madrid, shall be composed, under my presidency, of the following persons: Minister of state, Don Alejandro Castro, formerly minister of the treasury and the colonies and ambassador in Rome; minister of grace and justice, Don Francisco de Cárdenas, ex-counsellor of state; minister of war, Lieutenant-General Don Joaquin Jovellar, general-in-chief of the army of the center; minister of finance, Don Pedro Salaverría, formerly minister of public works and of finance; minister of marine, Don Mariano Roca de Togores, marquis of Molins, formerly minister of marine and public works and now director of the Spanish academy; minister of gobernacion, Don Francisco Romero Robledo, ex-minister of public works; minister of public works, Don Manuel de Orovio, marquis of Orovio, formerly minister of finance and of public works; minister of ultramar, Don Adelardo Lopez de Ayala, ex-minister of ultramar.

MADRID, December 31, 1874.

The president of the regency-ministry,

ANTONIO CÁNOVAS DEL CASTILLO.

No. 520.

*Mr. Cushing to Mr. Fish.*

No. 209.]

LEGATION OF THE UNITED STATES,  
*Madrid, January 5, 1875. (Received February 8.)*

SIR: I hasten to lay before you such appreciations of the present political situation as are suggested by personal observation and information derived from trustworthy sources. I assume that the new government possesses some elements of stability which have not belonged to any other in Spain during the last six years. It has the general support of the army, that army being the most numerous which any Spanish government has had under arms since the epoch of its independence. The officers, from the highest to the lowest, are animated by the conviction that they have more to hope, whether in the sense of their own permanence or of honors, from monarchical than from republican institutions. And the army in Spain, when the officers are united, is more potential than any and all other interests, as the world has seen, both in all the great modifications of administration during the reign of Queen Isabel and in the subsequent changes of dynasty

or government; for, in the whole history of the reign of Isabel, the men who pre-eminently controlled events as responsible statesmen, were above all successful generals, Espartero, Narvaez, O'Donnell, Serrano, Prim. Meanwhile all the public authorities throughout Spain (that is, excepting the seat of the rebellion) have either sent in their adhesion to King Alfonso, or have retired passively and unresistingly to give place to appointees of the new government. Add to this that Alfonso has been acclaimed, either by such troops as were in garrison, or by the people, or by both combined, in all the cities and large towns of Spain. These internal occurrences, as it is admitted here on all hands, impart appearance at least of exceptional strength to the new government. There is another important fact in this relation. I have had opportunity, within the last two days, of ascertaining the condition of the common people of the lower wards, (*barrios bajos*), that is to say, the operative classes outside of official circles; and I find that although at heart they are indifferent to the change as a question of political principle, and, indeed, many of them adverse, yet they are so thoroughly disgusted with everything which has happened or been done in Spain during the last few years, and especially with the suicidal misconduct of all the leading men, including the republicans, who have figured in affairs since the dethronement of Isabel, that they cheerfully accept the present counter-revolution. Moreover, it is to the epoch of the dethronement of Isabel, and to the men who produced it or succeeded in power, that the people attribute the origin of the superlative calamities under which Spain is now overwhelmed, namely, the insurrection in Cuba and the civil war in the Basque provinces and Navarre. And I learn from the consuls of the United States, as well as otherwise, that the same sentiment of acquiescence in the present change, induced by mere disgust for what has gone before, operates in the provincial cities of Spain, notwithstanding that some of them are in conviction republican. The change of government, it is true, has been brought about by military pronouncement; but it is not competent for any party in Spain to find fault with others in that respect. All parties, one after the other, have had recourse to conspiracy, violence, and usurpation in order to attain their personal or party ends. It was by military violence that Prim, Serrano, and Topete overthrew Queen Isabel. It was by military violence that Serrano became President by the will of Pavia. And although, on the abdication of Amadeo, the proclamation of the republic was not the act of this or that general, yet it was brought about by a not less flagrant violation of order and of constitutionalism, as we understand it, a mere legislative assembly of two branches having formed themselves into a constituent convention in imitation of the worst examples of the French revolution, and having then proceeded, by mere usurpation and surprise, to impose a new government on Spain. So that neither the militarism nor the illegality of the movement tends in the least degree to repel the acceptance of it in any part of the country. And quite as little repulsion is produced by the suddenness of the movement or the brief time occupied in its consummation. On the night of the 11th of February, 1873, all Spain went to bed a monarchy and woke up to its astonishment a republic. In like manner on the 2d of January, 1874, the republican dictatorship of Castelar disappeared in a night to give place to the conservative dictatorship of Serrano. Hence, on the morning of the 31st of December, 1874, it did not appear at all extraordinary to the Spaniards in waking up to find that the republic had vanished and the monarchy returned with the dramatic celerity of a

change of scenery at the opera. In truth, all the great actors in public affairs during the last six years, Prim, Serrano, Ruiz Zorrilla, Figueras, Pi y Margall, Salmeran, Castelar, have lost consideration as political guides, or as governors, by the absolute failure of each successively to prevent or terminate civil war, to maintain domestic order, to regularize the public finances, to promote industry and commerce, to protect private persons and property, to introduce liberty without anarchy or conservatism without despotism, or in any other respect to establish good government in Spain. The people are beginning to conceive that *revolutionism*, as a principle or theory of government, is the climax of nonsense and absurdity, seeing that that is to convert the desperate remedy for a mortal disease into the daily food of its life, and thus, under pretense of curing the occasional ills of the body-politic, to condemn it to inevitable death and dissolution. In a word, weary of empiricism, demagogy, and anarchy, Spain seeks refuge once more in the hoped-for repose of its traditional institutions of religion and hereditary monarchy. Whether the people of Spain will thus attain the political tranquillity which they seek remains to be seen. The difficulties before them are too serious to be disregarded. In the first place comes the question whether the restoration will be moderate, liberal, clement, and simply conservative, or whether it will be reactionary, illiberal, sanguinary, destructive, ultramontane, and despotical. Such are the conflicting interests which now agitate all men in or near to the seat of power, and which conspicuously appear even in the constitution of the new ministry. And the conflict in question is unavoidable. Half of Spain, though not distinctly republican, still is liberal; and another half of Spain is hardly less intensely Catholic and monarchical than it was in the time of Philip II. These irreconcilable interests or sentiments stand at present regarding each other in attitude of armed truce, but cannot long avoid coming into collision.

Thus, while, in his manifesto, Alfonso is made to profess ideas of constitutional administration in accordance with the spirit of the age, yet almost the first political act he performs is to signify devotedness to Pio Nono, (implying acceptance of the new syllabus of the Vatican,) as might well have been expected from the godson of the Pope. The relation of religious questions to political ones, conspicuous as it now is in Italy, France, Germany, Great Britain, and Ireland, is still more so in Spain. In the desamortization of the property of the church, the government promised to make provision for the clergy, secular and regular, including the ex-claustrated monks and nuns, many of whom had as good title to the property in their possession as any other proprietor in the country; but thus far this solemn engagement has not been fulfilled, to the consequence of almost universal discontent and disaffection on the part of the clergy. Don Alfonso will of course be called on to pay up all the long arrears of this national indebtedness. Then the clergy and their friends will undoubtedly exact the repeal of the new laws of civil marriage and registry, so as to restore to the church one of the potential elements of its authority, namely, its control of the three great stages of human life—birth, marriage, and death. More important than all which is the purpose to restore Catholic unity in Spain, which strikes deep into the very heart of many of the gravest practical questions of government. Next comes the question of the public finances, a problem apparently absolutely insoluble. If the people of Spain could be reconciled to paper-money or a legal-tender legislation like ours, she would be relieved at once of her financial difficulties. But that seems impos-

sible, whether the fact be attributable to the remarkable prudence of the people in money-matters, or to their impracticability, or to the limited scope of their national resources. Nothing short of a reign of terror administered by men of the stamp of Robespierre, Couthon, and Saint Just, with the guillotine *en permanence* behind them, could force paper-money into currency among the rural proprietors and peasants of Spain. And thus it is that she continues to stagger under the effort to do what no other modern government has proved able to do, not even Great Britain with the treasures of the Indies in her lap, namely, to carry on a great and protracted war without paper-money, (or its equivalent in other forms of credit,) and by means of the mere proceeds of annual taxation. I do not see how this state of things is to be remedied by the simple accession of Alfonso XII. Again, the energies of Spain are being exhausted, on the right hand and on the left, by her endeavors to put down two obstinate insurrections, one in the Peninsula and one in Cuba. To fail in either of these undertakings would be fatal to the new government. And these insurrections are the gigantic perils which confront Don Alfonso. As to the Carlist war, it does not as yet appear that the accession of Don Alfonso abates in the least degree the violence with which it rages in the Basque provinces, in Navarre, in Catalonia, in Aragon, or in the Maestrazgo. It is reported that Don Alfonso, immediately after his coronation here, is to proceed to Logroño and assume in person (with the Conde de Cheste to counsel him) the command of the army of the north. He will have generals enough to act under him or for him. And history is not without furnishing examples of men like Alexander, Octavius, Cæsar, Charles V, the Prince de Condé, Bonaparte, who seem to be born generals, or who, at least in youth as early, or almost as early, as Don Alfonso commanded great armies and won brilliant victories by a sort of intuitive instinct or genius of war. But no signs of any such extraordinary and abnormal qualities appear in Don Alfonso. His presence with the army of the north may impart impulse to military movements, as that of the pretender does among the Carlists. But in the present case there is no reason to expect that the course of military events will depart from the ordinary channel. According to actual appearances, it will be a matter of hard fighting, with generals of respectable but not supreme capacity on either side, and the enemy a people of mountaineers, who have never yet been effectually conquered by any of the invaders who have successively attacked them—Romans, Arabs, Goths, or modern Spaniards. And yet, not to succeed on the present occasion will be fatal to the personal prestige and to the political strength of Don Alfonso.

And then as to Cuba. Is the task before him an easy one there? The government of President Serrano has professedly been doing everything in its power, during a period of about six months, to send 12,000 men to Cuba, and thus far has barely succeeded in dispatching by dribbles one-third of that number.

I think the difficulty has been in persuading or forcing either officers or men to go to Cuba, there to encounter chances of death beyond all imaginable perils of the battle-field. Can the government of Don Alfonso overcome these embarrassments? And yet it must do so. I pause in this connection to hint only at what will be said more explicitly in another dispatch, namely, the idea which seems happily to be gaining ground among the Alfonsinos that, in the matter of Cuba, they have to count with the United States. Prominent also among the troubles of the hour is one of the chronic evils which afflict Spain, namely, the general avidity for office—*empleomanía*, as it is commonly

called here. The embarrassments which the Government of the United States suffer in this respect are sufficiently serious; but they are as nothing compared with those which weigh down the government of Spain. We have so many fields of ambition in the governments of the separate States; so many diversities of attractive and lucrative occupation in our numerous private business corporations, and in the marvellous development of our commerce and manufactures; we have such boundless opportunities for successful enterprise in the opening up and cultivation of the new Territories and States, that only a relatively small proportion of our society looks to the General Government for the means of advancement and support. In Spain it is otherwise. The number of business corporations is comparatively small; commerce and manufactures are in a languishing state; commonplace agriculture is the principal occupation of the people, and no outlets for discontent exist except beyond sea in the two Spanish Antilles and the Philippine Islands, constituting but a feeble resource for the country, which formerly had its field of emigration embracing nearly the whole of both Americas. Thus it is that such a multitude of persons seek for employment in the public offices, civil or military, of the government. The evil is aggravated by the frequent vicissitudes of party and administration, every change involving the general dismissal of those previously in office and the substitution of new appointees in their stead; each party, and each faction of a party, having a long *tail* of dependents, who compose its only strength and at the same time its incurable weakness. Nor is that all. For the most part, those who, in each one of these changes of party, go out of office, fall into the class called *cesantes*, who, while thus retired, are entitled to pensions. Even the transient ministers of the republic, some of them in office only a couple of weeks, are entitled to and receive a life-pension of 30,000 reals. Thus we have now the *cesantes* of all the parties which have successively been in power during the late revolutionary epoch, dating back to the time of Isabel. All these wrecks or dregs of so many defeated parties settle down for the most part at Madrid. Here, whilst out of office, they are chronic conspirators against every government, and one of the potential causes of the ephemeral character of the successive administrations of the country and of its never-ending political perturbations. At the present time they throng the avenues of office to such degree as almost to render the transaction of the public business impracticable, and to become an intolerable burden, not only to the ministers, but to every person who has real or supposed political influence or presumed access to any of the ministers. Thus one person, the editor of "*El Eco de España*," complains that, independently of personal applications for assistance in obtaining office, he has, in the lapse of three days only, received five hundred letters of written applications for his influence, all which it is physically impossible to answer and attend to, or even to read. Of course, very few of this host of aspirants for office will obtain it, and all who do not will fall into the putrescent condition of conspirators against the new government.

Finally, let me mention one other cause of serious apprehension for the future, and that is the *family* question. It would be very difficult for any person who contents himself with reading the proclamations, manifestoes, and speeches of the men who produced the overthrow of Queen Isabel, to understand the inducements which impelled them to such action. On the surface, it seemed to be mere personal discontent or baffled ambition, especially on the part of the soul of the movement, Prim. During the last ten years of the reign of Isabel, Spain had been

materially prosperous, and far better off in every respect than she has been any day since then. Administration, then as now, consisted of a never-ending succession of ephemeral factions, occasionally held in check by the vigor of such men as General Narvaez and General O'Donnell; but every faction out of power was loud in denunciation of the corruption of the particular faction in power, to the necessary logical conclusion of there being little to choose between any of the factions. And sure it is, whatever of misgovernment in public affairs may have existed during those ten years, it could by no possibility have exceeded the disasters without number which have since that time been crowded into the political life of Spain.

\* \* \* \* \*  
I am, &c.,

C. CUSHING.

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No. 521.

*Mr. Cushing to Mr. Fish.*

No. 211.]

LEGATION OF THE UNITED STATES,  
*Madrid, January 12, 1875. (Received February 8.)*

SIR: I inclose herewith the following documents, which exhibit the present general diplomatic situation of Spain relatively to other governments, including the United States, namely:

1. Copy of a circular communication from the Marquis de Molins, as minister of state ad interim under the regency ministry, received by me on the 5th instant.
2. A communication from the proprietary minister of state, D. Alejandro Castro, received on the 7th instant.
3. A decree of the new King, issued after his arrival in Spain, which officially constitutes the new government, as published in the *Gaceta de Madrid* of the 10th.
4. My response to the note of the Marquis de Molins, and to that of Mr. Castro.

\* \* \* \* \*  
I speak of the change as a *revolution*, for such in fact it is in a constitutional sense. Although the ministers assume a regular transmission of sovereignty by descent from Queen Isabel to her eldest son and legitimate heir, Don Alfonso, and while, in doing so, they pass over the constitution of 1869, as a nullity, to go back to the last previous constitution in force, that of 1845, yet, according to this last constitution, the theory of succession would be defective by reason of the irregularity of the abdication of Queen Isabel, since that constitution provides as follows:

"ART. 46. The King requires (*necesita*) to be authorized by a special law—

"1. To alienate, cede, or exchange any part of the territory of Spain.

"2. To admit foreign troops into the kingdom.

"3. To ratify treaties of offensive alliance, special ones of commerce, and those which stipulate the payment of subsidies to any foreign power.

"4. *To abdicate the crown in favor of his immediate successor.*"

Now, Isabel has abdicated, it is true, but by a mere private act, without authority of any previous law, in consequence of which the point has been made, again and again, that her abdication might at any time

be revoked by her, and she might at will re-assume the crown. To be sure, there is now no cause to apprehend any such act on her part, she having, in various forms, accorded her assent and approval to the accession of Don Alfonso. Notwithstanding which, however, as a question of constitutional right, the flaw in the succession still remains to the effect of imparting a shade at least of revolutionary quality to the dynastic restoration.

In various other respects the accession of Don Alfonso involves departure from constitutionalism.

Thus, in the circular note of the Marquis de Molins, he speaks of the regency ministry as an organization "provided for by all the constitutions in the event of the absence of the King."

I cannot find any such provision in the constitution of 1845, or in any other constitution.

The constitution provides that, in case of a minority of the King, his father or mother, or, in defect of them, the next heir to the crown, shall enter at once on the exercise of the regency. But that provision does not legally apply here, because by the same constitution the King arrives at majority at the age of fourteen. Besides which, this provision of the constitution has not been observed in fact by calling the King's father or mother to the regency. (Arts. 55 and 56.)

Another article (60) provides that, if there be no other person to whom of right belongs the regency, the Cortes shall nominate one, to be composed of one, three, or five persons. But here has been no nomination by the Cortes, and the present regency consists of nine persons.

Article 61 again provides that, "when the King shall be in a state of impossibility to exercise his authority, and that impossibility shall have been recognized by the Cortes," then also the royal authority shall be exercised by a regent or a regency. But that is in no respect the present case.

Meanwhile the constitution does not provide for any such regency as the Marquis de Molins suggests, "in the *absence* of the King;" and absence from where? From Madrid? Clearly not; for it has been the practice of the King to act wherever he might be in any part of Spain. Absence from Spain? But there is no such provision in the constitution; and, in point of fact, the decree appointing the regency ministry expressly purports to be founded on an act of Don Alfonso performed outside of Spain.

Finally, add to all this the consideration that it was not a regency appointed, as a regency only could be, by the Cortes, but a regency ministry combining with the quality of a ministry the incompatible one of a regency, and its members designated in fact by a volunteer reunion of important persons under the auspices of the captain-general of New Castille; and we shall thus be constrained to conclude that the change has really been a revolutionary one.

It must be conceded at the same time that this revolution approaches nearer to legality than any previous one; that it has been accomplished without the effusion of a drop of blood, or the occurrence of the slightest breach of the peace or other disorder; and that it appears to be generally acceptable in all parts of Spain, outside of the immediate theater of civil war, and recognized as a consummated political fact by the rest of Europe.

The young King was received with royal honors in his passage through France to Marseilles, on his way to Barcelona. It seems undeniable that his reception at Barcelona was thoroughly cordial, as it will undoubtedly be at Valencia, where he arrived yesterday by water from Barce-

lona, and, meanwhile, unequivocal manifestations of support of him continue to arrive from all parts of Spain.

According to announcements made, he is to reach Madrid on Thursday, the 11th, where the most extensive arrangements and preparations have been made for his reception with all imaginable manifestations of loyalty and welcome. And, after remaining here a few days, he will proceed, by way of Zaragoza, to present himself to the army of the north.

The chiefs of all the legations held a meeting yesterday at the residence of Mr. le Comte de Chandordy, the French ambassador, to decide what course we shall take in the matter of the reception of King Alfonso.

We have all received individual cards of invitation to occupy a balcony of the ministry of Gobernacion, for the purpose of witnessing the processional entrance of the King into Madrid, and have accepted the invitation.

Question then arose whether we should call on the King, as proposed by the Austrian minister; but the French, Russian, British, and some other ministers, myself included, opined that it did not become us to take any such step until officially instructed or authorized so to do by our respective governments, and that proposition was rejected.

Next came the question whether we should partake in any of the forms of demonstration customary in Madrid on occasions of this nature, such as placing hangings at the windows, hoisting flags in the day-time, and illuminating our houses or offices in the night.

The conclusion was unanimous to hoist no flag, to put out hangings at discretion, if we found it convenient, but not otherwise; but to illuminate as a matter of unexceptional conformity with social usages in Europe.

I annex, in justification of my own act in this respect, an extract from the last edition of Marten's Guide Diplomatique, with the very significant explanatory note of the annotator Pinheiro.

I reserve for another dispatch some more confidential observations in reference to the special position of the United States in Spain at this time.

I have, &c.,

C. CUSHING.

P. S.—January 13, 1875. While this dispatch is being copied there comes to hand a note from the minister of state, under date of the 12th, in reply to mine of the 11th, to which I refer in this postscript in order to save the loss of time which would be produced by recopying the dispatch itself.

You will perceive, I think, that Mr. Castro meets me more than half way in the expression of readiness to proceed in this transaction of matters pending between the ministry and this legation. I shall therefore call upon him at the earliest convenient opportunity, and proceed at once to business.

[Inclosure 1 in No. 211.—Translation.]

*The Marquis de Molins to Mr. Cushing.*

MINISTRY OF STATE,  
The Palace, January 3, 1875. (Received January 5.)

SIR: The events which have just been realized in Spain are so clear and evident that they need no demonstration; so legal and necessary, that they require no apology; and, nevertheless, so great a desire animates the regency ministry not to interrupt the



friendly relations which unite Spain with other countries, that, even in the absence of the king and of the minister especially charged with international affairs, it has the honor to address you through my channel.

Since the time when the dynasty of which Don Alfonso is the representative set foot, he being yet a child, on foreign soil, every kind of government has been tried in Spain without any success, or rather, let us say, with deplorable and ruinous result. Elective monarchy, federal republic, cantonal republic, unitarian republic, civil dictatorship, military dictatorship, and even the absolutist system, which a family of pretenders symbolizes in our country, and which, in spite of all efforts, although it is potent to occupy and ruin a portion of our territory, is powerless to establish itself throughout the whole kingdom—all has been inefficacious as well as dolorous.

Meanwhile the hearts and desires of all the world were turned with sorrow from the spectacle of present things toward the heir of our ancient kings, to Don Alphonso de Borbon y Borbon, who, by the abdication of his august mother, united in his person the monarchical right and the parliamentary tradition.

Those who, see in the religious principle the mainspring of our national history, and whose sensibilities were wounded by the excesses which in this respect were committed by the revolution, reasonably set their hopes in him, who, being the worthy heir of Catholic monarchs, abounded in the faith of his fathers without, however, seeking to make thereof an instrument and a standard for his political aspirations.

Those who, giving due heed to this same national history and still more to the just exigencies of the present age, believe to be impossible every form of government not founded in the parliamentary doctrines which the ancient Cortes foreshadowed, and which are realized among modern nations, also turned their eyes trustingly toward the king, the immediate descendant of two illustrious princesses, who, now more than forty years ago, bound together indissolubly the interests and the existence of their throne with the interests and the existence of parliamentary principles.

Even the popular classes and the most advanced parties, already taught by the experience of unfounded hopes and of deceitful promises, had sadly learned that the government most prodigal of those hopes and promises was the one that most trampled them under foot when the opportunity occurred, and exacted the greatest sacrifices of principles, of men and of interest; and they too turned their gaze toward the young heir to a constitutional throne, under the shadow of which great development had been successfully given to the public wealth, and credit had been maintained, without forgetting, however, either to spare Spanish blood or to defend sacred and still glorious interests. All opinions, in fine, and all classes had a unanimous although secret desire to return with Don Alfonso to constitutional order and to hereditary right; to re-establish with the throne the principal agent and the best supporter which, by a singular exception, the public liberties have ever had in our country. There are well-founded motives to believe that the depositaries of public power themselves knew and confessed that the proclamation of Don Alfonso, made in one way or another, was the only solution of the Spanish crisis.

There is foundation also for presuming that, if the foreign powers benevolently recognized the last dictatorship, it was in the understanding that it would lead to a monarchical solution.

That which may indeed be questioned, and does in truth appear strange, is, that the evil being so great, the remedy so evident, and the desire for it so unanimous, King Alfonso XII was not sooner proclaimed; and the explanation is at once simple and honorable. It neither comported with his decorum nor with his interests, nor with the good of the country, that the soil whereon he had been born should through his fault be stained with blood, or that his good right should be weakened by impositions of force or by melancholy excesses.

But the limit of public suffering having been reached, and the general conviction being ripe, as you have seen, it was enough that at a point distant from this capital the name of Don Alfonso should be pronounced to cause that, without violence of any kind, and without any promise whatever, in a few hours, all the great cities, although ungarrisoned, and all the lesser villages, even those governed by revolutionary authorities, and the armies themselves, without any action that might have tended to produce indiscipline, should proclaim as legitimate, constitutional king, Don Alfonso. Nor is this strange, because the traditional and hereditary right is an irresistible force, and the names, the personal qualities, and the dynastic antecedents of the King, Don Alfonso de Borbon, are a political programme. His very name, the most gloriously repeated in our history, exerts a prestige, and his education also, received during misfortune and in several capitals of Europe, is a guarantee of culture and of skill.

Of these circumstances was the product, and was born and constituted the present public power, with the sole aim of reuniting the monarchical and constitutionally, hereditary tradition by bringing to Spain the King Don Alfonso XII, assuming forthwith the character of regency ministry, provided for by all the constitutions in the event of the absence of the King.

No further than this, Mr. Minister, extend either the faculties or the plans of the

regency ministry, and for this reason they are not more explicitly expressed; but the public events are in themselves of too much gravity, and too keen our desire to surround, as soon as possible, the legitimate and constitutional throne of Don Alfonso with the good international relations which before existed, for us to longer delay giving you information of these facts, which we doubt not and hope you will bring to the knowledge of your Government, re-inforced, perhaps, with the influential testimony of that which you may have seen and appreciated for yourself in a country in which you have already resided for some time, and where you are justly esteemed.

The government has been constituted in the following manner:

President of the regency ministry, Don Antonio Cánovas del Castillo;  
 Minister of state, Don Alejandro Castro;  
 Of grace and justice, Don Francisco de Cárdenas;  
 Of war, the lieutenant-general Don Joaquín Jovellar;  
 Of finance, Don Pedro Salaverría;  
 Of gobernación, Don Francisco Romero Robledo;  
 Of public works, Don Manuel de Orovio, Marqués de Orovio;  
 Of ultramar, Don Adelardo López de Ayala; and  
 Minister of marine and of state *ad interim*, the undersigned.  
 I avail myself of this occasion to offer to you the assurances of my most distinguished consideration.

The MARQUES DE MOLINS.

The MINISTER PLENIPOTENTIARY OF THE UNITED STATES.

[Inclosure 2 in No. 211.—Translation.]

*Mr. Castro to Mr. Cushing.*

MINISTRY OF STATE,

*The Palace, January 6, 1875. (Received January 7.)*

YOUR EXCELLENCY: I have the honor to address myself to your excellency with the object of stating to you that yesterday I took charge of the ministry of state, to which I was appointed by decree of December 31, ultimo.

In bringing this to your knowledge, I improve the occasion to offer to your excellency the assurances of my most distinguished consideration.

ALEJANDRO CASTRO.

The MINISTER PLENIPOTENTIARY OF THE UNITED STATES.

[Inclosure 3 in No. 211.—Translation.]

### ROYAL DECREE APPOINTING A MINISTRY.

[From the "*Gaceta de Madrid*," January 10, 1875.]

*Royal decree.*

BARCELONA, January 9—3.50 p m.

*The Minister of Marine to the President of the Regency-Ministry, Madrid:*

His Majesty has deigned to issue the following royal decree:

"Having happily arrived upon the territory of my country, and after giving thanks to the Divine Providence for the visible protection accorded to me, and also to the people and the sea and land forces for the constant adhesion and the enthusiastic affection they show; exercising the prerogatives which, as constitutional KING, pertain to me—

"I hereby nominate president of my council of ministers Don Antonio Cánovas del Castillo; and minister of state, Don Alejandro Castro; of grace and justice, D. Francisco de Cárdenas; of war, Don Joaquín Jovellar; of finance, Don Pedro Salaverría; of marine, Don Mariano Roca de Togores, Marqués de Molins; of gobernación, Don Francisco Romero Robledo; of fomento, Don Manuel de Orovio, Marqués de Orovio; and of ultramar, Don Adelardo López de Ayala, who shall continue exercising, as hitherto, their respective attributions during my absence from the capital of the Kingdom, while I visit, as I propose, the armies of the center and of the north.

"Given in Barcelona, the 9th of January, 1875.

Rubricated by the royal hand.

The minister of marine—

"MARIANO ROCA DE TOGORES."

And by order of His Majesty I communicate it to your excellency for your cognizance.

[Inclosure 4 in No. 211.]

*Mr. Cushing to Mr. Castro.*LEGATION OF THE UNITED STATES,  
*Madrid, January 11, 1875.*

SIR: I had the honor, on the 5th instant, to receive from his excellency the Marques de Molins, as minister of state *ad interim*, a communication under date of the 3d, in which he informed me of the acclamation of Don Alfonso de Borbon y Borbon to the throne of Spain—of the antecedents and inducements of that event—and of the consequent organization of a regency ministry in the absence of Don Alfonso; with expressions of desire for the continuance of the good international relations heretofore existing between foreign governments and that of Spain.

Reciprocating earnestly this desire, in so far as regards the United States of America, I hastened to transmit the note of his excellency to my Government.

I had the honor, further, on the 7th instant, to receive the note of your excellency under date of the 5th, apprising me of your having taken charge of the ministry of state, in pursuance of appointment, which I have also transmitted to my Government.

I have authority to remain at my post discharging my present functions as envoy extraordinary and minister plenipotentiary of the United States in Spain.

I assume, however, that in accordance with the general diplomatic usage of Europe, new letters of credence will be requisite for my formal presentation to His Majesty the King.

Meanwhile, I assume also, that in like accordance with diplomatic usage, officious intercourse between this legation and the ministry may still be maintained, with advantage to both countries, for the transaction of ordinary business, in the manner heretofore practiced in similar circumstances on the occasion of material changes of government. In this conception, and if your excellency entertains similar views on the subject, it will gratify me to be able at an early day to pay my respects in person at the ministry of state.

I avail myself of this opportunity to tender to your excellency the assurance of my most distinguished consideration.

C. CUSHING.

His Excellency SEÑOR DON ALEJANDRO CASTRO, *Minister of State.*

[Inclosure 5 in No. 211.—Translation.]

*Mr. Castro to Mr. Cushing.*MINISTRY OF STATE,  
*The Palace, January 12, 1875. (Received January 13)*

YOUR EXCELLENCY: I have had the honor to receive the note of your excellency, dated yesterday, in which you are pleased to acknowledge reception of the communications from this ministry of the 3d and 5th instant, giving you knowledge of the acclamation of His Majesty Don Alfonso de Borbon y Borbon as King of Spain, of the antecedents of this fortunate event, and, lastly, of the organization of a regency-ministry during the absence of His Majesty.

I take note, with the greatest satisfaction, of what your excellency is pleased to state to me with respect to the instructions which you have received from your Government to remain at your post, discharging your present functions of envoy extraordinary and minister plenipotentiary of the United States, and I am of accord with the opinion of your excellency as to the necessity of new credentials, conformably with diplomatic usage, for the official presentation of your excellency to His Majesty the King, continuing meanwhile in the officious transaction of the matters between this ministry and the legation under the worthy charge of your excellency, as equally convenient for the interests of both nations.

In this conception, not only shall I have great pleasure in continuing to contribute to the cultivation of the friendly relations which have ever existed between Spain and the United States of America, but I earnestly desire to have the honor of making the acquaintance of your excellency, as I already have had occasion to make that of the greater part of your worthy colleagues of the diplomatic body.

I improve this opportunity to offer to your excellency the assurances of my most distinguished consideration.

ALEJANDRO CASTRO.

No. 522.

*Mr. Cushing to Mr. Fish.*

No. 220.]

LEGATION OF THE UNITED STATES,  
*Madrid, January 21, 1875. (Received February 17.)*

SIR: I annex hereto a series of acts and decrees of the highest political importance, touching the relations between the new government of Don Alfonso and the Roman Catholic Church.

1. Appendix A and B consists of original and translation of a circular, under date of the 2d instant, addressed to the Spanish cardinals, archbishops, bishops, and capitular vicars, assuring them that the accession of Don Alfonso involves the termination of all persecution of the church and the restoration of cordial relations with the See of Rome, and invoking their aid for the re-establishment of peace and order in Spain.

To this circular most of the persons addressed have already responded in terms of cordial adhesion to the government.

2. Appendix C and D contain original and translation of a decree, of the 9th instant, restoring to the church all ecclesiastical edifices or other property not disposed of by proceedings of desamortization, nor covered by concordat with the See of Rome, with exception only of such as have actually been applied to the service of the state.

3. Appendix E and F consists of exposition and decree of January 15, appropriating the sum of 41,611,674 pesetas to satisfy the legal obligations of the government to the clergy for the present year, and providing for liquidation in due time of the long arrears due the clergy under the existing legislation for the secularization of ecclesiastical property, and the consequent undertaking of the state for the maintenance of the church.

4. In addition to this, the government has ordered that the archives of all the cathedrals and collegiate establishments of Spain which had been taken away from them under the administration of Mr. Ruiz Zorrilla, and stowed away as old lumber in the cellars of the ministry of fomento, shall be restored to the ecclesiastical corporations to which they respectively belong.

I have not time to comment at length on these great measures, which, independently of their intrinsic interest, are expected to exercise potential influence toward putting an end to the war in the northern and northeastern provinces of Spain.

I have, &c.,

C. CUSHING.

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[B.—Inclosure 1 in No. 220.—Translation.]

*Circular of the minister of grace and justice to the clergy.—Dated January 2, 1875*

[From the "Gaceta de Madrid," January 7, 1875.]

The regency-ministry being constituted, I have believed it my duty to give official information to your \_\_\_\_\_ of the fortunate occurrence to which it owes its origin. In the relations of the Catholic states with the church, that which is a prosperous event for the former cannot be other than a happy augury of success for the latter. If the church has suffered in common with the Spanish nation the countless ills of sterile political convulsions, with the advent to the throne of an illustrious prince, Catholic, like his pre-eminent ancestors, and resolved to repair of, in so far as may be possible, the injuries which have been caused, should lead us to hope for days of tranquillity and

better fortune. The proclamation of our King, Don Alfonso XII, being the true end of those disturbances, shall, for the same reason, be the beginning of a new era, in which shall be seen the re-establishment of our good relations with the common Father of the faithful, which have been unfortunately interrupted by the unjust acts and the excesses of these latter times. All that can affect these reciprocal relations shall be forthwith carried out with the counsel of wise prelates and in accord with the Holy See, and the church and her ministers shall be given all the protection which is due to them in an eminently Catholic nation like ours. To this end the government counts upon the efficient co-operation of your ——— and of your worthy companions in the episcopate, upon the assistance of the high corporations of the state, and upon the aid of all good Catholics. I take pleasure in communicating to your ——— the happy news of this salutary change in our political situation, which permits us to hope for more favorable days for the nation and for an epoch of better fortune for the church.

May God guard your ——— many years.

Madrid, January 2, 1875.

FRANCIS DE CÁRDENAS.

To the most eminent cardinals, the very reverend archbishops, the reverend bishops, and the capitular vicars.

[D.—Inclosure 2 in No. 220.—Translation.]

*Decree dated January 9, 1875, restoring to the church certain real property held by the state.*

[From the "Gaceta de Madrid," January 10, 1875.]

MINISTRY OF FINANCE.

*Decree.*

When, in 1860, by agreement with the Holy See, the real estate of the clergy was transferred to the state, exception was made of such only as by its nature and conditions could not enter into commerce nor subserve any economical necessity, remaining in consequence and thenceforth completely effected the desamortization of all its real property. Subsequently, and by different authorities, various measures were adopted, by virtue of which much of the property not comprised in the transfer returned to the power of the state, some of the buildings thereon being demolished, others set apart for public uses, and the rest subsisting in the power of the state.

The regency-ministry desires to remedy, so far as may be possible, the effect of those measures, because, if it be not done, monuments which to their religious character add the merit of being artistic and historical will disappear, as many others have done, to the dishonor of the nation.

For these considerations it has decreed the following:

ARTICLE 1. The financial administrators, in accord with the very reverend archbishops and reverend bishops, shall put at the disposal of the same those estates of the clergy which, having been excepted from the transfer agreed upon with the Holy See in 1860, are to-day in the power of the state in consequence of subsequent measures, and which are not now applied to public uses.

ART. 2. If the demolition of any of the edifices on such estates shall have been begun, the financial administrators shall order the suspension of work thereon, reporting the same to the ministry of finance. Likewise they shall give account of those now employed for the public service.

ART. 3. The necessary measures shall be adopted by the ministry of finance for the execution of this decree.

Madrid, January 9, 1875.

The president of the regency-ministry,

ANTONIO CANOVAS DEL CASTILLO.

The minister of finance,

PEDRO SALAVERRÍA.

[F.—Inclosure 3 in No. 220.—Translation.]

*Royal decree of January 15, 1875, charging the clerical establishment to the state as formerly.*

[From the "Gaceta de Madrid," January 17, 1875.]

REGENCY MINISTRY.—MINISTRY OF FINANCE.

*Preamble.*

SEÑOR: The advent of Your Majesty to the constitutional throne signifies, in the political sphere, concord, order, and liberty; in the moral sphere, the affirmation of these sentiments of piety, honor, and highmindedness which ever constitute the character of the Spanish people; in the economical sphere, the development of our national wealth and material interests, probity in the administration, and the fidelity of the state in the fulfillment of all its obligations.

The undersigned minister, being charged with the realization of the great and just aspirations of Your Majesty, in so far as refers to the economical adjustment and better management of the public finances, deems that no measures can be received by Your Majesty with livelier interest, at the moment of occupying the throne, than these which I, to-day, have the honor to submit to the high consideration of Your Majesty.

They aim at demonstrating that the government of Your Majesty aspires, in its very first acts, to repair the lessons which the turbulences of these latter times have caused in the rights of the creditors of the state; to make it patent that no obligation is to remain ignored or forgotten; that, according to the measure of our present poverty or of our future prosperity, all these obligations will be equitably fulfilled, and, in fine, that not for a single moment, or under any pretext whatever, can doubt or dispute arise respecting the compromises contracted in the name of the nation by the powers which have successively governed, constituting, in virtue thereof, obligations for the public treasury.

Reducing, señor, these general ideas to determinate cases, the government of Your Majesty has found it necessary in the first instance to take up the anomalous situation in which it finds the payment of the appropriations for worship and the clergy, which are sacred for many reasons, and which should therefore be punctually satisfied, thus relieving so venerable a class from the state of abandonment and misery in which they now are.

Such obligations, by virtue of the laws of the kingdom, and of treaties with the Holy See, were previously comprised in the general estimates of the state, and were discharged without interruption for the space of many years.

The last estimates in which they figured as a whole were those of 1870-71. But, before then, the law of December 18, 1869, which deprived of their offices and of their salaries or pensions all those functionaries who did not swear fidelity to the constitution of that year, was applied to the clergy, without taking into account the fact that the sums assigned to them were not the recompense of an administrative function, but were in compensation of ancient rights and properties which the church had ceded to the state in the interest of the general public welfare.

Notwithstanding that measure, the clerical allowances were paid in some dioceses in part, thus establishing unjust inequalities.

At this stage of the matter there was a government which proposed to the Cortes to transfer to the provincial and municipal exchequer the totality of the ecclesiastical obligations; the project, although discussed by the Cortes, did not go so far as to receive the sanction of the crown, doubtless because, on better appreciation of its inconveniences from every point of view, it was abandoned, with the intention of returning to the regular and just order of things, and of making the state alone responsible for what was its own and unavoidable obligation.

The result was, therefore, that at one time, because of the exigency of a political oath, and at another by reason of the ecclesiastical estimates being separated from the general estimates, in the expectancy, perhaps, of the adoption of a definitive form of payment, the obligations of worship and the clergy were the only ones for which, during the last five years, no financial appropriation was made, nor payments, except those made as before stated, to a limited number of dioceses.

The last administration, with the view, doubtless, of putting an end to such a state of things, embodied in the present budget a provision according to which the estimates for the ecclesiastical obligations were to be considered augmented in the amount necessary for their payment, in conformity to the arrangement between the government and the Holy See; but the government of Your Majesty deems that it is its duty, in the fulfillment of laws and solemn stipulations, which cannot be ignored, to comprise forthwith in the current estimates the necessary credits for the appropriations for public worship and the clergy, which shall be payable from the present month, and executing an early liquidation which shall determine the sum of the particular and general arrears of these obligations, in order to establish the form in which the treasury may meet, according as its resources permit, so considerable a deficit.

The government trusts that, at the conclusion of the war, when it becomes possible to fix the sure and permanent resources upon which the state is to count for meeting the general expenditures for which it is answerable, the church, as it has itself shown in past times, will not be the last to lend its aid, without sparing sacrifices, to placing the public treasury in a condition to bear, with economy and order, the weighty burden which has been cast upon it by the political disturbances of every epoch and the misfortunes of the kingdom.

For these considerations, the undersigned, in accord with the council of ministers, has the honor to submit to the approbation of Your Majesty the annexed draught of a decree:

MADRID, *January 15, 1875.*

SEÑOR: At the royal feet of Your Majesty.

The minister of finance—

PEDRO SALAVERRÍA.

*Royal decree.*

In view of the representations of the minister of finance, and in accord with my council of ministers, I decree the following:

ARTICLE 1. The estimate of ecclesiastical obligations corresponding to the current economical year, which is embraced in the third section of obligations of the ministerial departments, *ministry of grace and justice*, to the amount of pesetas 3,251,014.46, is hereby declared augmented to the sum total of pesetas 41,611,674, which is the amount of the same appropriation in the budget of 1870-'71, the last in which were consigned all the allowances for public worship and the clergy. This augmentation shall be understood as relating exclusively to the proportional part necessary to satisfy the obligations falling due from the first of the present month to the end of the economical year, and with the same detailed distribution as in the aforesaid budget of 1870-'71.

ARTICLE 2. The obligations proper to the budget, re-established by the foregoing article, shall be paid to the clergy in the accustomed form and at the same times when payment shall be made of the salaries of all the active classes of the state, according as the same shall be permitted by the preferent needs of the civil war.

ARTICLE 3. The arrears which may result in favor of the clergy on account of obligations in the previous budgets, and for sums due but not paid by the public treasury in the course of the current one, shall be the object of a liquidation which shall be effected at once, to the end that, the amount thereof being determined, the form in which satisfaction is to be made may be decided upon.

ARTICLE 4. The minister of finance shall order whatever is requisite for the execution of this decree, of which he shall in due time give account to the Cortes.

Given at the palace, January fifteenth, one thousand eight hundred and seventy-five.

RUBRICATED BY THE ROYAL HAND.

The minister of finance—

PEDRO SALAVERRÍA.

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No. 523.

*Mr. Cushing to Mr. Fish.*

No. 245.]

LEGATION OF THE UNITED STATES,  
*Madrid, February 2, 1875. (Received February 26.)*

SIR: Among the extreme measures of the revolutionary period which followed the dethronement of Queen Isabel, were several which seem to be inspired by mere hatred of religion rather than any intelligent idea of sound public policy.

One of these measures was the prohibition of canonical marriages, or at least the deprivation of all such marriages of any effect on the civil status; in other words, bastardizing of the issue of any such marriage.

This law was utterly repugnant to the conscientious convictions of a great majority of Spaniards.

We can imagine its influence in this respect in supposing an attempt by law in the United States thus to exclude marriages from the scope of religious sanction. Such an attempt, it is true, was made in one of the American colonies at an early period in our history, but soon yielded place to more tolerant and elevated sentiments of public policy.

The revolutionary law in question was not only repulsive to the public conscience, but was the source of constant embarrassment in all questions of civil status and descent, and in many questions of administration, such as pensions, and more especially in enlistments or conscriptions for military service.

The law has been amended by recent decree since the accession of Don Alfonso, copy and translation of which are annexed.

I have, &c.,

C. CUSHING.

[Inclosure in No. 245—Translation.]

*Decree of January 22, 1875, providing for the inscription of the offspring of canonical marriage in the civil registry.*

[From the "*Gaceta de Madrid*," January 23, 1875.]

MINISTRY OF GRACE AND JUSTICE.

*Decree.*

The royal order of February 11, 1872, which directed the inscription in the civil registry, as natural children, of all those born in canonical wedlock, although in apparent conformity with the spirit of modern laws, has deeply wounded the dignity of the Catholic marriage institution, causing continual perturbations in the family and in society.

The government cannot remain indifferent to these, and although it occupies itself presently in the reform of the law of civil marriage which is shortly to be made public, yet, giving heed to the incessant clamor of public opinion, which grows more emphatic day by day, it can do no less than anticipate a resolution which may harmonize the legal status of the children born in Christian wedlock with that which public conscience indisputably recognizes as theirs.

If, in order to respond to the necessities of the reparatory policy initiated by the government, the rights of the church are to be reconciled with those of the state, it is indispensable to recognize in the Catholic marriage-rite all the effects which were attributed thereto by our national laws, our immemorial customs, and the never-abandoned religious faith of Spaniards.

With this object, and to repair in an equitable manner the offensive condition which the existing law to-day imputes to children born of such marriages when their parents do not comply with the recent formalities of the civil registry, it is indispensable to establish simple, short, and expeditious steps whereby these children may regain a legitimacy which is to-day denied to them by the law, although Spanish society has never ceased to recognize it.

Founded, therefore, on these considerations, the KING, and in his name the regency-ministry, has accorded the following:

ARTICLE 1. Children born of exclusively canonical marriage, whose inscription in the civil registry may be competently solicited, shall be inscribed as legitimate children, provided that the marriage of their parents be legally shown.

ART. 2. In order to effect the inscription to which the preceding article refers, the declaration will, however, suffice of any one of the persons mentioned in the forty-seventh article of the law of civil registry; but said inscription shall have a provisional character until the interested parties present the marriage-certificate of the parents. This document shall be noted and recorded in the manner which may be determined by the regulations.

ART. 3. The children of exclusively canonical marriage inscribed until now as natural children, shall be inscribed forthwith at the instance of the parties as legitimate, rectifying for this purpose the entries thereof which may have been recorded.

This rectification may be solicited within the term of one year, by the parents and other persons specified in the forty-seventh article of the law above mentioned, by means of the baptismal certificate of the child registered as natural.

A special instruction will determine the form in which this document shall be noted and recorded, and in which the inscriptions in question shall be rectified whenever the interested parties shall have allowed to pass the time fixed for so doing.

ART. 4. Children born of canonical marriages subsequent to the date on which the existing law took effect, who shall not have been inscribed in the registry, shall be inscribed as legitimate in the form prescribed by the foregoing articles, their parents or guardians, who shall apply for their inscription within the term fixed in the preceding article, remaining free from all pecuniary responsibility.

ART. 5. The children to whom the preceding articles refer do not need to be presented for registry when the person designated by the law to make such presentation shall exhibit the corresponding certificate of baptism.

ART. 6. Shall be considered for all civil effects as legitimate children from the day of their birth, those born of exclusively canonical marriage, who, in virtue of the provisions of this decree, shall obtain their inscription in the civil register as being legitimated.

ART. 7. All enactments contrary to the provisions of this decree are here repealed.

MADRID, January 22, 1875.

The president of the regency-ministry,

ANTONIO CÁNOVAS DEL CASTILLO.

The minister of grace and justice,

FRANCISCO DE CÁRDENAS.



No. 524.

*Mr. Cushing to Mr. Fish.*

No. 256.]

LEGATION OF THE UNITED STATES,  
*Madrid, February 11, 1875. (Received March 12.)*

SIR: I annex hereto copy and translation of a circular of the new government, authorizing precautionary measures in reference to persons engaged in acts of agitation against the domestic peace of the country, the peculiarity of which is that it proposes to deal with the leaders, not the rank and file.

This circular contains nothing new otherwise, either in theory or practice, all previous governments in Spain, liberal or illiberal, having done the same thing; for, although the last constitution in date prohibited administrative acts of banishment, yet the prohibition was nullified by the customary device of suspending the constitutional guarantees, which, of course, had the effect of leaving unlimited power in the hands of the executive.

This measure has been applied thus far to one person only, D. Manuel Ruiz Zorrilla.

After living in retirement at his home in one of the provinces for more than one year, that is, through the whole period of the republic, he came to Madrid a few months ago and proceeded in the first place to initiate a political movement with republican professions from one of the apartments of the Escorial.

He has ended with drawing on himself the animadversion of King Alfonso's government, which has invited him to leave Spain.

I have, &c.,

C. CUSHING.

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[Inclosure in No. 256.—Translation.]

*Precautionary measures against opposition party-leaders.*

[From the *Gaceta de Madrid*, February 4, 1875.]

*Circular.*

MINISTRY OF GOBERNACION.

The preservation of material and moral order and their speedy re-establishment wherever they may come to be disturbed is the first duty of the government and of its representatives in the provinces, and in order that you may second the purposes of the regency-ministry, it is important that you should have perfect knowledge of the principles and rules to which to adjust your conduct in so important a question.

God has visibly protected the nation in this fortunate crisis in her history, allowing political events of such deep transcendancy to be consummated without having to lament a victim or wipe away a tear because of them; on the contrary, rather, the country finds itself so refreshed on entering anew into conditions of normal existence, that it has been possible to mitigate many penalties imposed by other governments, raising decrees of banishment, revoking enforced changes of domicile, and even restoring liberty to no small number of unfortunates who rather were the victims and instruments of the crimes of others than culpable through their own willful acts.

The rebellions which afflict the country being extinguished, this work of reparation and oblivion may be completed.

But a people which has suffered such violent transitions in a few years, may readily preserve for some time afterward the smoldering germs of indiscipline, and it may be

that when the government most needs tranquillity and confidence, moral or material conflicts may be provoked by a few unquiet spirits, dissatisfied because order and the public welfare do not give them the same advantages as the anarchy and misfortune of their country.

Disorder is readily caused by no more than setting a few sophisms on foot and leaving them to wend on their way of destruction and anarchy; order laboriously creates itself, rooting assured principles and restraining with uninterrupted energy and prudence all evil passions, and to such end it is needful to repress discreetly, with as much underlying energy as prudence in procedure, every attempt at agitation which might disturb the general aspiration for peace and concord.

In this repression, and in whatever steps it may be necessary to adopt to realize it, and even to foresee it, you must earnestly bear in mind that the true responsibility for public disorder may always be traced to a small number of persons who are rarely convinced of the very ideas they diffuse; neither are they participants in the passions they excite.

It is imperative to prevent the repetition of the disheartening spectacle so frequently shown in Spain, of the hard expiation imposed on the misled sons of the people, the poor, the ignorant, the weak, seduced sometimes by the most iniquitous machinations, by whom the prisons have been filled or who have been sent to perish in remote islands, while the real culprits who dragged them on knowingly, and with interested ambition enjoy impudent impunity.

Inspired by this pre-eminent idea of the government, you should give your attention principally to those who may be leaders of any agitation which may threaten public order.

It will, in the majority of cases, sufficiently effect its repression, that one person only suffer the consequences of his conduct; it is certain that the measure will never have to be extended to many if study be devoted to the origins and beginnings of the evils it is sought to cut off, and the country will assuredly find as much justice as expediency in the inflexibly energetic chastisement of the true culprits and the granting of the largest indulgence to the mere tools of their ambition.

For like motives the Government regards as inexpedient certain general measures which have sometimes been adopted respecting those who only held affinity of ideas with the men who deserved the repressive action of the public power, basing such measures not on the direct guilt of the parties, but on the purpose to tranquilize peaceable citizens at any cost or to satisfy opinion. This is not affected by such steps, which rather irritate the undecided than deter the real disturbers. Popular sentiment is surer. Nothing so fully satisfies it as the realization of equity and justice by those in power, and this only requires that attention be given to, and the extraordinary faculties of the Government be exerted upon, the few who are the true and knowing cause of the disturbance, in defense and shelter of the many whom they seek to lead into misfortune.

Animated by these principles, you will for your part be sure of all the sound opinion of the country and will set moral and material order upon solid bases, counting in the application of such rules on the energetic support of the Government, which deems them as the most essential to which its conduct should be conformed in the present state of affairs.

Madrid, February 3, 1875.

ROMERO ROBLEDO.

The governor of the province of \_\_\_\_\_.

No. 525.

*Mr. Cushing to Mr. Fish.*

No. 259.]

LEGATION OF THE UNITED STATES,  
Madrid, February 11, 1875. (Received March 12.)

SIR: I annex hereto copy and translation of a circular of which the professed object is to check, if possible, the tendency to military *pronunciamentos*, which constitutes one of the chronic evils of Spain.

Inasmuch as the acclamation of Don Alfonso was in its inception an act of military *pronunciamento*, many persons criticise the circular as being illogical on the part of his government.

As regards theory or doctrine there is nothing new in the measure; every previous government in Spain has applied to *defeated* political

generals the same discipline of exile or of enforced quarters in the Canaries, the Balearic Islands, or the Filipinas.

In execution of this circular three officers of the army, who were present at a political demonstration accompanying the departure of Mr. Ruiz Zorrilla from Madrid, as spoken of in my No. 256, namely, Generals Lagunero and Izquierdo and Colonel Canona, have been ordered into quarters at the Canaries or to leave Spain.

Measures of this character have this much of extenuation in Spain, that defeated or minority parties appear to be intellectually or morally incapable of *legal* opposition to the government of the time being, but recur at once to conspiracy and to mutinous insurrection as the means of regaining power. Mr. Castelar well said, in one of his best speeches, that in the crisis of every party question here, it is reduced to the inquiry, which has the *cannons* at its disposition? The patient *electoral* efforts of party minorities, which one sees in the United States, and the courteous and tolerant appeal to public opinion on the part of opposition parties in Great Britain, are traits of constitutional government quite unknown and almost incomprehensible in Spain.

I have, &c.,

C. CUSHING.

[Inclosure in No. 259.—Translation.]

*Forbidding army officers to participate in party contentions.*

[From the "*Gaceta de Madrid*," February 5, 1875.]

CIRCULAR.

YOUR EXCELLENCY: The participation of military men, whatever may be their rank, in the various and continuous agitations of public life, carries with it grave inconveniences, experienced at all times, and in Spain especially as never before and more than in any other country. To remedy such evils, whose own evidence needs no extensive demonstration, many measures have been directed, both in Spain and without; it being an established principle that the chiefs, officers, and soldiers of the armed forces should remain in total separation from party strife and from political ambition, so that they may give no thought save to the exalted duty of defending the social order, the laws, and the integrity and independence of their country. From this principle, which is regarded as fundamental in every well-ordered nation, exception is only admissible in the case of general officers, for they may be, and frequently are, appointed responsible ministers, or become members of the political assemblies in virtue of the free suffrage of their constituents. Thus it has come about in Spain until now, and thus it will be in future, especially if the coming Cortes admit the compatibility of military office with legislative functions, which is admitted, in greater or less degree, on all hands. But while the Cortes of the nation are not convoked, and while liberty of suffrage is temporarily suspended by the rigor of royal ordinances and of military discipline, which is and should ever be still greater in the high grades of the army than in the lower grades, equally for chiefs, officers, and soldiers, the generals themselves, whatever be the elevation of their post, should abstain from taking part in the contests of parties. This is exacted of them by sound military principles, and even by those of public right in normal times, and to-day it is moreover exacted in a more stringent manner, by the perilous state of war in which the nation now is. To meet the war with whatever elements of utility the country holds, it is indispensable that the government of the King may count alike upon all the generals, without distinction, giving heed solely to their merits and military qualifications; and this cannot, in point of fact, be reconciled with their participation in active politics, however loyal may be their intentions. As was said more than six years ago to the army, and by a minister certainly in no wise suspicious for the most advanced political schools, "What is lawful to citizens, who cannot exert upon the opinions of the rest other pressure than that of their doctrines or their isolated influence, may be deemed even punishable in those who wield the influence of command or of rank in the element armed by the state to make the law respected by those who fail to obey it or who forget it." Starting from this proper consideration and from recognized sound military principles, which have been recalled to mind, and whose observance has been already commanded in different circulars, the regency-ministry of the kingdom has acceded to

order that with the zeal which distinguishes your excellency, and using all the efficacious means which are within the reach of your authority, you will prevent military men of all classes from taking part in reunions, manifestations, and any other acts whatsoever of a public character, it being your excellency's duty, in case of controvention of this royal order, to proceed to the detention of those who may fall into such culpability, and to give account immediately to the government for the action which may be in order.

By order of the aforesaid regency-ministry, communicated by the president thereof, minister of war *ad interim*, I say this to your excellency for your cognizance and the consequent effects.

May God guard your excellency many years.

Madrid, February 4, 1875.

The secretary—

MARCELO DE AZCARRAGA

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No. 526.

*Mr. Fish to Mr. Cushing.*

No. 124.]

DEPARTMENT OF STATE,  
Washington, February 12, 1875.

SIR: Your No. 211, in reference to the change of government in Madrid, has been received. You inclose a copy of the circular of the Marquis de Molins, minister of state *ad interim*, announcing a temporary ministry, of a note from D'Alejandro Castro, the newly-appointed minister of state, and of a decree issued by the new King on his arrival in Spain, together with your replies to the circular and the note of the minister of foreign affairs.

I have read with interest your pungent observations upon the circular and this new effort to establish a permanent government, but I abstain at this time from extended comment upon all these matters, and upon the effect of this change upon the relations between the United States and Spain.

Your course, as detailed in this dispatch, and the tone of your replies to the Marquis de Molins and the minister of foreign affairs, are fully approved.

I am happy to perceive that your present relations are not only agreeable with the members of the new government, but that the ministry seems desirous of cultivating friendly relations with this Government.

I am, &c.,

HAMILTON FISH.

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No. 527.

*Mr. Cushing to Mr. Fish.*

No. 270.]

LEGATION OF THE UNITED STATES,  
Madrid, February 16, 1875. (Received March 12.)

SIR: I annex hereto copy and translation of a decree of January 25, 1875, re-organizing the ministry of state, which, if not containing anything useful to you by way of practical suggestion, may yet be not unacceptable as general information.

I have, &c.,

C. CUSHING.

[Inclosure in No. 270.—Translation ]

Decree of January 25, 1875, organizing the ministry of state.

[From the "Gaceta de Madrid," January 26, 1875.]

## MINISTRY OF STATE.

The actual organization of the ministry of state does not respond to the special service intrusted to it, neither does there exist due harmony between its diverse branches; the result of which is confusion and delay in the dispatch of its affairs for want of the proper classification of its business, which is one of the most indispensable conditions of efficient service.

For some time past, with the laudable purpose of reducing the budget, but with lamentable want of foresight, gradual reduction has been made in the official grades of the functionaries of this important department, diminishing the number of its officers and the official hierarchy to such limits that the former is insufficient for the necessities of the service, while the latter fails to correspond in rank with the relations which, in the transaction of business, the most prominent employés of the ministry are obliged to maintain with foreign representatives.

To remedy these inconveniences, giving at the same time somewhat of just development to the relative grades of the diplomatic career, it is urgently necessary to augment the *personnel* of this department and create certain posts, whose chief officers, by their rank and greater power of initiative, may be better fitted to investigate the matters confided to them and facilitate their resolution.

To this end, and bearing in mind that the slight increase which is incurred in this behalf in the working-force of employés remains abundantly compensated by the diminution of other expenses which are thereupon in a large measure reduced,

The King, and in his name the regency-ministry of the King, has seen fit to approve the following organization which, for the future, is to control the ministry of state.

ARTICLE 1. The working-force of the ministry of state is reformed in the following terms:

	Salary.
One secretary, minister plenipotentiary of the first class.....	Pesetas 12,500
One chief of the section of political affairs, minister plenipotentiary of the second class.....	11,250
One chief of the section of administration and accounts, minister plenipotentiary of the second class.....	11,250
One chief of the section of commerce and consulates, minister plenipotentiary of the second class.....	11,250
Three first clerks, <i>chargés d'affaires</i> , at 10,000 pesetas each.....	30,000
Four second clerks, secretaries of the first class, at 7,500 pesetas each.....	30,000
Six first auxiliaries, secretaries of the second class, at 5,000 pesetas each.....	30,000
Eight second auxiliaries, secretaries of the third class, at 3,000 pesetas each..	24,000
<b>Total.....</b>	<b>160,250</b>

ARTICLE 2. It corresponds to the subsecretary's office to draw up royal letters, letters of credential, and letters of recall, and those of the chancery and the cabinet, draught and prepare treaties, ratifications, full powers, commissions, and *executuras* and other analogous documents, issue passports, and sign the visés thereof, take cognizance of international matters corresponding to the royal household, and of questions relating to etiquette, ceremonials, and protocols; and to institute the proceedings relative to crosses and honors, grandeeships, *maestranzas* and titles of nobility, and draw up the royal decrees referring to the concession of these.

It shall, moreover, have in charge all that relates to the diplomatic *personnel*, the consular corps, and the staff of interpreters, the tribunal of the *rota*, [the *supremo ecclesiastical tribunal of Spain*,] the orders and their assemblies, agency of *preces*, [through which the *papal bulls* pass,] the archives, the subalterns of the ministry and its dependencies, the "*seccion*" of special couriers, and the private secretaryship of the minister.

It shall likewise have under its care the preparation of the *escalafones*, [classified lists of officers according to their respective rank,] and the special regulations of each branch of the service, as well as the general register of official correspondence received and sent out, and the cipher.

ARTICLE 3. It corresponds to the section of political affairs to institute all proceedings relative to diplomatic questions and to those of international policy in the provinces of ultramar; to prepare and put in form treaties of peace, friendship, and recognition, conventions for the adjustment of the judicial relations of Spain with other powers, both in civil and criminal matters, and treaties of boundaries, maritime prizes, extradition of seamen, literary copyright, civil rights, and the foreign debt, and to have cognizance in matters of the royal patronage and the ecclesiastical jurisdiction,

in so far as relates to international acts; to institute proceedings affecting nationality, and to dispatch judicial letters requisitorial, and judicial and litigious business.

ARTICLE 4. It corresponds to the section of administration and accounts to audit all the expenses of the dependencies of the ministry, both ordinary and extraordinary, to keep the accounts and computations of the productive branches of the same: to open credits in foreign countries, and to authorize the expenses of the secret service and that of vigilance; to draw up the tariffs of consular fees and the like; to prepare the general estimates, and to supervise the service performed by the disbursing office, which is at present a dependence of the ministry of finance. It shall also have under its administrative charge the *Obra Pia of Jerusalem*, with the *personnel* thereof, the beneficent establishments of Santiago and of Monserrat in Rome; all the ecclesiastical foundations in Italy which pertain or which shall pertain to Spain by royal right, patronage, or protectorate, and the property of the nation in the East and in Morocco. To it also corresponds to supervise and examine the accounts of the collections of customs in the said empire, (*Morocco*), and the staff of collectors employed therein, so long as the intervention shall last.

ARTICLE 5. It corresponds to the section of commerce and consulates to have cognizance of mercantile affairs and of international traffic, and of those which affect the arts and industry in their relation with foreign countries; to prepare and put into form treaties and conventions of commerce, navigation, fisheries, health, beneficence, postal service, telegraphic service, and consular representation; to have cognizance of all matters concerning the exercise of consular jurisdiction, as well in civil and commercial matters as in criminal proceedings, and of the further rights and attributions of consuls; to give information respecting the general measures which may be adopted with regard to customs and to commerce in general by the other ministers, as well as with regard to universal expositions of arts and industry, to revise and publish the commercial reports of the consuls, and to take charge of the preparation of the statistical data which affect navigation and the development of international traffic.

ARTICLE 6. The force of the ministry shall be distributed as follows:

*Subsecretary's office*.—Chief, the subsecretary; one first clerk; one second clerk; two first auxiliaries; two second auxiliaries.

*Section of political affairs*.—The chief of the section; one first clerk; one second clerk; one first auxiliary; two second auxiliaries.

*Section of administration and accounts*.—The chief of the section; one first clerk; one second clerk; one first auxiliary; two second auxiliaries.

*Section of commerce and consulates*.—The chief of the section; one first clerk; two first auxiliaries; two second auxiliaries.

MADRID, January 25, 1875.

The president of the regency-ministry,

ANTONIO CANOVAS DEL CASTILLO.

The minister of state,

ALEJANDRO CASTRO.

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No. 528.

*Mr. Cushing to Mr. Fish.*

No. 287.]

LEGATION OF THE UNITED STATES,  
*Madrid, February 24, 1875. (Received March 22.)*

SIR: There has arisen here a question of diplomatic precedence, which seems worthy in itself to be communicated to you, and still more because it has political relations.

Mr. Layard is the oldest in office of the foreign ministers at Madrid of the rank of envoy extraordinary and minister plenipotentiary. He came here in the first instance accredited to the regency; and since then, to say nothing of intervals of mere officious residence, he has had occasion already to present new credentials twice at least, namely, to King Amadeo and to President Serrano.

Of the ministers of the same class the first to be accredited to King Alphonso was Mr. D'Antas, the minister from Portugal—formerly Portuguese minister in the United States—and the second Mr. de Kondriaffsky, minister from Russia.

Mr. Layard has not yet been accredited to King Alphonso.

In these circumstances Mr. de Kondriaffsky suggested that precedence should date from the new credentials, nor from those presented to anterior governments; the effect of which would be to depose Mr. Layard from the precedence in his class, and to transfer that to Mr. D'Antas.

The minister of France, M. le Comte de Chandordy, ranking all the present diplomatic agents here as the only ambassador, and being of course without personal interest in the question, convoked a meeting of the diplomatic body on the 19th instant for its solution.

The question arises in the following article of the "*Règlement sur le rang entre les agens diplomatiques*," adopted by the concurrence of Austria, Spain, France, Great Britain, Portugal, Prussia, Russia, and Sweden, at the congress of Vienna, and inserted in the protocol of March 19, 1815, as follows:

ARTICLE 4. Les employés diplomatiques prendront rang entre eux dans chaque classe, d'après la date de la notification officielle de leur arrivée." (See Kluber's Acten des Wiener Congresses, t. vi, p. 204.)

At this meeting it was at once admitted on all hands that precedence did not depend on the date of official presentation to the government, but on that of the official notification of readiness to be presented and of arrival at the court for that purpose, (*notification officielle de leur arrivée.*)

But this primary conclusion did not affect the substance of the question, which, after a little debate, it came to be plainly seen was, whether a minister, whose mission is interrupted by change of dynasty or government, and the consequent necessity of presenting new credentials, should hold over as precedence from his earliest official arrival; or whether the precedence should shift with every suspension of official relations, and start anew with the new credentials, (or official notice of such credentials, without regard to the date of arrival,) or the change of dynasty or government.

Several gentlemen presented the question in its theoretic aspects, assuming that the "*arrivée*" of the "*Règlement*" intended "*arrivée*" for each dynasty or government; arguing that the minister holding over might have been accredited to and received by some previous intruder, usurping, illegitimate, and odious dynasty or government, the recognition of whose previous rank would therefore implicate the legitimate dynasty or government in *quasi* admission of the previous usurpation or intrusion, and would also be prejudicial to the rights of such foreign governments as had refused to recognize the usurpers or intruders, and had done so in the true interest of legitimate and regular government.

This argument presented distinctly the question of Russia *versus* Great Britain, and of the political effect of the different lines of policy pursued by them relatively to Spain.

To this argument the answer was that the restored legitimate government might well, in its discretion, refuse to receive a foreign minister as unacceptable personally by reason of his previous official association with the illegitimate and usurping government; but that, if it omitted to take this particular exception, such minister would continue to have precedence among those of his class in the degree of his original rank, regardless of change of dynasty or government, and of the consequent interrupted succession of accrediting acts.

M. de Chadordy stated that in France the point had been settled in practice, so as that the precedence acquired by the earliest arrival persisted (supposing a continued residence) through all changes of dynasty

or government in the diplomatic relations of foreign ministers at Paris, whether among themselves or relatively to the government.

Mr. Layard presented a document to show that the practice was the same as understood in Great Britain. Extract of the document is annexed.

Apart from these precedents, and the weight to which they are entitled as such, it seemed to me that the doctrine they assume is most conformable to the principles and usages of our diplomacy, which disregards the inquiry of legitimacy, and the inherent political embarrassments of action involved in such inquiry, and looks only to inquiries of fact in the condition of any foreign government. I therefore voted accordingly.

Such, also, was the conclusion of a great majority of the diplomatic body.

The precedence in his class therefore remains with Mr. Layard.

\* \* \* \* \*

I have, &c.,

C. CUSHING.

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[Inclosure in No. 287.]

*Lord Palmerston to Her Majesty's minister in Persia, January 18, 1850.*

[Extract.]

"I have to acquaint you that such a pretension is at variance with the practice of this court, according to which the foreign ministers preserve their relative precedence according to the date of their official notification of their first arrival, without regard to the order in which they may afterward deliver fresh credentials on the accession of a new sovereign. As an instance of this, I may state that in the year 1830, when King William IV came to the throne, Prince Lieven, the Russian ambassador, was the senior ambassador, and he preserved his precedence as such without dispute, notwithstanding that the Dutch, the French, and the Austrian ambassadors delivered their new credentials a considerable time before Prince Lieven delivered his."

In consequence of this dispatch, Colonel Shiel was instructed to resist the pretension (attributed to Prince Dolgoroucki) to take precedence of him.

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No. 529.

*Mr. Cushing to Mr. Fish.*

No. 316.]

LEGATION OF THE UNITED STATES,  
*Madrid, March 16, 1875. (Received April 7.)*

SIR: I do not suppose it likely that the President will be criticized for recognizing the monarchy of Don Alfonso in Spain after having recognized the republic proclaimed on the downfall of King Amadeo; but as everything is possible, however unjust it may be, on the part of factious political opposition, it may be permitted me to submit some observations on this point.

I assume that the true doctrine in this respect, as repeatedly set forth in your instructions to this legation, cannot be more succinctly or exactly stated than it is in the celebrated message of President Monroe, as follows:

"Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal concerns of any of its powers; to consider the government *de facto* as the legitimate government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and



manly policy, meeting in all instances the just claim of every power—submitting to injuries from no one.”

Of course, asserting for ourselves the absolute right of self constitution according to the national will, we cannot refuse the same right to others, whatever may be the resulting form. To do so would necessarily provoke retaliation, and involve us in quarrel, if not in hostility, with nearly the whole of Europe.

I have had occasion more than once in these dispatches to refer to the embarrassments and the acts of inconsequence to which other powers have been subjected in their recent dealings with Spain, by seeking to found recognition on some unstable basis of political theory other than the mere question of fact which governs the action of the United States.

A curious illustration of the practical value of our rule as the true solution of the problem has been brought to public notice by the recent action of the See of Rome in recognizing Don Alfonso.

The Carlists, of course assuming that they are the true representatives of the Catholic Church in Spain, were disturbed at first by the act of Pio IX; but they now reconcile themselves to it by publishing in their official journal, the *Cuartel Real*, printed at Tolosa, in Guipúzcoa, a papal “constitution” of Gregory XVI, (1831,) which sets forth the rule of the Roman See of always recognizing *de facto* governments irrespective of questions of legitimacy. This constitution, in order to justify itself, not only refers to “the vicissitudes and changes in the organization and situation of states” in modern times, but cites ancient examples of the application of the rule, as in the recognition of Robert Bruce by John XXII, and various other old cases of the same nature, in which the Papal See was accustomed “to accord the title of king to whoever possessed a kingdom in fact,” without being understood in so doing to prejudice the question of legitimacy.

It seems to me that this document has interest not as authority, of course, but as a fact to illustrate the practical convenience of our rule, considering that the Papal See, during the thousand years and more (namely, since the time of Charlemagne) that it existed as a temporal power with perpetual succession through elective chiefs, has witnessed such innumerable changes, dynastic and political, and has entertained diplomatic relations with so many diverse forms of government in the several states of Europe and America.

I have, &c.,

C. CUSHING.

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No. 530.

*Mr. Cadwalader to Mr. Cushing.*

No. 147.]

DEPARTMENT OF STATE,  
Washington, March 24, 1875.

SIR: Your No. 287, of the 24th ultimo, relating to a question of precedence, recently made the subject of consideration by the diplomatic corps at Madrid, has been received.

The incident is in itself an interesting one, and the conclusion reached by that body appears to have been eminently proper.

I am, &c.,

JOHN L. CADWALADER,  
*Acting Secretary.*

No. 531.

*Mr. Cushing to Mr. Fish.*

No. 337.]

LEGATION OF THE UNITED STATES,  
*Madrid, April 10, 1875. (Received May 6.)*

SIR: The chief subject of interest in Madrid at the present moment is the public disclosure of the large number of arbitrary deportations carried into effect by the party of the revolution, as they are sometimes called, comprehending the liberals, radicals, republicans, and constitutionals of the various administrations which have ruled Spain since the overthrow of Queen Isabel.

It is one of the characteristic traits of all these parties that they do not possess the discretion and self-control either to frame or to administer a practicable constitution. While in opposition, they attack without measure, and in their declamatory speeches and writings commit themselves to extravagant doctrines which are of impossible application in power. Hence the adoption of a constitution is speedily followed by a legislative act suspending its guarantees. Hence, also, the loudest professions of adhesion to parliamentary forms is accompanied by systematic disregard of the fundamental idea of such government, namely, in legislation by executive decrees and orders, and in the imposition of taxes and appropriation of the public moneys without authorization by the Cortes.

In the matter of private rights the inconsequence of these parties has been equally conspicuous. They commence with such exaggerated assertion of private rights as, if observed, would render all government impossible, and then proceed in total disregard of all private rights to a degree utterly unknown at the present time to any of the most despotic governments in Europe.

Mr. Castelar is a conspicuous example of these contradictions. His writings and speeches abound with declamatory assertions of impracticable theory, with advocacy of *retraiamientos*, that is, withdrawal from legitimate political opposition at the polls, to *conspire* in pretended *retirement*, and, strangest of all on the part of a theoretical republican, in praise of military *pronunciamientos*. Of course, when in office, he turns his back on all these absurdities, and loudly condemns in others what he had systematically preached as political truth.

Others of the same visionary school, when placed in power, have frankly confessed the impossibility of governing according to their professions, and have resigned rather than subject themselves to the charge of inconsequence and self-contradiction, such as Mr. Salmeron and Mr. Pí y Margall.

The deportation question curiously illustrates this defect of true statesmanship.

The constitution adopted in 1869, which the self-styled liberals assume as the embodiment of their political creed, enacts that no person shall be detained over twenty-four hours without being delivered to the proper court for trial; that no person shall be imprisoned except by judicial authority; that private domicile is sacred; that no person shall be compelled to change his place of abode otherwise than by executory judicial sentence; and that no law or other disposition shall be established to limit any of these personal immunities.

I say nothing at present of constitutional provisions which profess to secure liberty of press, speech, and public assembly, or those which require that all laws shall be passed, all taxes imposed, and all appro-

priations made solely by authority of Cortes; all which provisions are and always have been substantially a dead letter.

Now, it happened a few days since that two or three of the professors of the university, officers appointed and paid by the government, and subject by express laws to its discretion and discipline, undertook to quarrel with the government because of a circular of instructions issued by the minister of fomento. An account of this affair will be given to you in another dispatch. Dissatisfied with the conduct of these professors, the government contented itself with requiring them to leave Madrid and take up their residence in some other part of Spain.

Discontented parties at once seized on this act to indulge in the most vehement inculpation of the government for alleged arbitrary violation of private rights and of the letter of the existing constitution. The organs of the government defended the act on legal grounds. But the question of the legality of this act was lost sight of very soon in a larger question.

Among the journals which vehemently attacked the government two were conspicuous, the *Pueblo*, belonging to Mr. Garcia Ruiz, and the *Iberia*, belonging to Mr. Sagasta, who had been each ministers of government in so-called liberal or constitutional cabinets.

Thereupon came to light (indirectly, on disclosure by the present government, we may suppose) that Mr. Garcia Ruiz had himself as minister authorized or participated in the arbitrary deportation of some fourteen hundred persons to the Marian Islands, the Spanish Botany Bay, in addition to multitudes arbitrarily confined in Spain or its colonies by similar unconstitutional administrative orders of other liberal ministers; to all which the attention of the actual government had been called, partly in consequence of the general act of *indulto* for such cases lately granted by the King, (copy and translation of which are hereto annexed,) and partly in consequence of a demand from the governor of the Filipinas for a large sum of money to save the host of *deportados* from starving in the desolate Marian Islands.

The retort was a terrible one. These deportations had been concealed from outside notice or commentary at the time they occurred. As arbitrary acts, they so much exceeded in number and degree anything done or imagined by this or any other royal government of Spain in modern times as to produce a profound impression on the public mind and spread consternation in the opposition camp.

"Behold the statesmen," said the Alfonsinos, "whose creed is the assertion of 'inalienable and imprescriptible rights, anterior and superior to all human society!' These are the men who, while complaining that half a dozen mischievous persons are merely invited by the king's government to leave the court, have themselves deported fourteen hundred persons to the ends of the earth without trial, besides crowding we know not how many others into the jails and *presidios* of Spain. These are the men whose victims are now crying to Heaven for relief, and are receiving it from the indulgent hands of King Alfonso!"

How many persons have been thus imprisoned in jails and *presidios* it does not yet appear. They began, it is said, with detentions at the African *presidio* of Ceuta, dating back to the time of Mr. Salmeron and Mr. Castelar, and continued during the first and so-called liberal cabinet of President Serrano.

Of the deportations we now have some precise information; for Mr. Garcia Ruiz, stung to the quick by the manifestations of public indignation, and silenced as journalist, stepped forth into personal publicity in a letter to the "*Imparcial*," of which translation is annexed.

He admits in substance that in the time of his ministry two hundred and seventy-seven persons were thus deported; but he insists on charging eighty eight of these to previous orders of Mr. Salmeron, Mr. Castelar, and Mr. Maisonnave; and he proceeds to say that one thousand of the whole number of fourteen hundred are chargeable to the subsequent ministry of Mr. Sagasta.

That blow struck home; for Mr. Sagasta's newspaper had also, in the matter of the rebellious professors, undertaken to censure the government. He felt constrained to make personal explanation, translation of which is annexed. He speaks in a more manly spirit than Mr. Garcia Ruiz, as might have been expected, from the different characters of the two persons; he defends the deportations on the ground of political expediency, which, if admitted, effectually dispels any dream of constitutional free government in Spain.

These disclosures, addressing themselves as they do to the comprehension of all persons, high and low, are operating to the immense discredit of the implicated political parties or factions.

The discussion has drawn forth a letter from Mr. Salmeron, absolutely denying any action of his in the matter; and also another from Mr. Maisonnave, in which he admits sending persons to Ceuta, how many he does not remember, but asserts that it was for the object of provisional or temporary detention merely, and disavows any responsibility for their subsequent deportation to the Marian Islands.

That explanation leaves standing an issue between Mr. Maisonnave and Mr. Garcia Ruiz, and also leaves unexplained the violation of law by the former in not bringing to trial the persons at Ceuta during five months, which is quite as much a violation of constitution as the act of deportation itself.

Indeed Mr. Garcia Ruiz objects that the eighty-eight persons sent to Ceuta came there with professed destination to the Filipinas.

Public attention has been called to this matter, not only by the before-mentioned decree of *indulto*, but also by a decree making appropriation to pay the expenses of the deportations, for which the previous governments neglected to make provision.

I annex an article of the *Epoca* which sums up the whole matter, in the sense, of course, of making the most of it, to the advantage of D. Alfonso.

It mainly serves, in my estimation, to show that not one of these personal factions is entitled to any special or exclusive sympathy on the part of the United States.

I have, &c.,

C. CUSHING.

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[Inclosure 1 in No. 337.—Translation.]

*Royal decree concerning political detenidos, February 13, 1875.*

[From the "*Gaceta de Madrid*," February 14, 1875.]

In attention to the reason set forth by my minister of gobernacion, in accord with the council of ministers,

I hereby decree the following:

**ARTICLE 1.** The governors of the provinces, where there are persons detained for political occurrences in jails, arsenals, and penal prisons, without the character of prisoners of war, shall draw up a report in order to exhibit the number and the individual circumstances of those under detention; shall immediately deliver into the power of

the competent courts those who are shown to be subject to criminal responsibility, in order to follow, with respect to them, the procedure which may be in order; and of the rest shall give account to the government, in order that the latter may accord their liberty.

ART. 2. The report shall extend to the persons transported to the transmarine provinces, who shall have been sent from each of the places of detention or penal establishments, and the captains-general of those islands shall give account of those who may be found therein, in the form established in the first article for those under detention, to the end that the government may accord their return to the Peninsula.

ART. 3. By the ministers of gobernacion and of ultramar will be communicated all the necessary orders for the execution and fulfillment of this decree.

Given at the palace the 13th of February, 1875.

Rubricated by the royal hand.

The minister of gobernacion,

FRANCISCO ROMERO Y ROBLEDO.

[Inclosure 2 in No. 337.—Translation.]

*Mr. Garcia Ruiz to El Imparcial.*

[From "*El Imparcial*," Madrid, April 8, 1875.]

*To the Director of the "Imparcial:—"*

SIR: I shall be grateful to you if you will give place in your popular journal to the following lines, for which will be thankful your most affectionate friend and servant, who kisses your hand,

EUGENIO GARCIA RUIZ.

I saw last night, casually, for I am not in the habit of reading the *Correspondencia*, that that journal knowingly errs in stating on its own account (or of others) that the deportations which, for political motives, were made, according to what is said by some newspapers, to the number of 1,300 during the last year, took place in the time of Mr. Garcia Ruiz, immediately after the 3d of January, that journal thereby endeavoring to cause the odium of all the imprisonments and deportations to fall upon me personally, leaving therefore untouched Mr. Sagasta and other ministers of his political color. Vain task and insensate pretension!

I, who always have said and will say the truth, even when it be against myself, because I am one of those who believe (and events justify me therein) that only with truth and good faith can anything be established in the world, must put in evidence the following facts, which I am ready to prove now and at any time and place:

First. Apart from what the captains-general did in several districts, not a single imprisonment, still less deportation, was decreed while I was minister of gobernacion, which was not agreed upon in council of ministers, being entered in the minute-book, kept by the secretary, Mr. Balagner, in respect to which I always insisted that the proceeding should be in due order, for I knew my isolated position in the ministry of the 3d of January, and I knew beforehand that time would bring with it complaints, accusations, and even calumnies, of all of which I did not wish to bear more than the share that belonged to me.

Second. In the time of Mr. Garcia Ruiz, as the *Correspondencia* says, when it have said in the time of the Duke de la Torre, Messrs. Sagasta, Zavala, Martos Garcia, Garcia Ruiz, &c., there were deported, by formal and solemn accord of the council of ministers, only 143 Cantonalists, made prisoners in Cartagena, who were turned over by the military authorities under the orders of the government in Almeria, at which point the steamer touched in order to take them on board, and 134 civilians, prisoners at Ceuta, the greater number (88) sent thither in the time of Messrs. Salmeron, Castelar, Maisonave, in consequence of the events in Andalucia, &c., and the remainder (46) prisoners in Madrid not for political opinions, but because they were guilty of common crimes, as *relapsed thieves and discharged (or licensed) convicts of evil life and habits*.

Third. All the remaining persons deported were sent away in the time of Mr. Sagasta to the number of 1,000, which is known not through the person who may have said so to the *Correspondencia*, but through the agency of the steamers which took the prisoners to the Philippine Islands, with the dates of their departure from port.

Fourth. The first vessel which, by accord of the council of ministers, (the list of them being read name by name,) took to the Philippine Islands the 134 persons deported from Ceuta and Madrid, and the 143 from Cartagena, 277 in all, which was the steamer "Leon," set sail the 16th of May, 1874, and not immediately after the 3d of January; as also set sail from the same port the *Iracab* with 696 deported persons on the 10th

of October following, and the Leon, (second voyage,) with 300 other deported persons on the 23d of November last.

Fifth and last. I do not rest under the charge of having imprisoned or deported any individual on my own representations, and if as minister I acceded to what the others proposed and in the degree already stated with respect to the cabinet of the 3d of January, it was because the ministry unanimously believed it necessary and salutary to send beyond the seas a few persons whom they judged to be dangerous, whether as common criminals or whether compromised by the events of Cartagena, and when, society being enervated, the civil war was raging with more strength than ever.

To sum up, during the ministry of the 3d of January, which fell on the 13th of May, there were only deported for civil causes 46 persons, all common and relapsed criminals.

EUGENIO GARCIA RUIZ.

MADRID, April 7, 1875.

[Inclosure 3 in No. 337.—Translation.]

Extract from an editorial article published in the "Iberia," Mr. Sagasta's organ.

#### DEPORTATIONS TO THE PHILIPPINE ISLANDS.

[From "La Política," Madrid, April 8, 1875.]

The Iberia makes important explanations with respect to the matter of the deportations to the Philippine Islands. Our colleague says:

"The Epoca reminds us that the deportations alluded to began on a large scale when the republican, Mr. Garcia Ruiz, was minister of gubernacion, Mr. Martors of grace and justice, and Mr. Echegary of finance. It behooves us to add that the presiding officer of that ministry was General Zavala, figuring in it beside our esteemed and dear friends Messrs. Sagasta, Topete, and Balaguer.

"Such were the members of the cabinet which 'appointed itself,' according to the expression used by the Imparcial, in 1875, (*sic*; should be 1874,) and which the Epoca considers graphic, without remembering that this capricious phrase may find other applications.

"We do not, therefore, under any strict and absolute obligation, to assume all the responsibility of those deportations. We assume it, nevertheless, resolutely and completely, for in this manner will overact the present management of the Iberia whenever it is interested in acts which may partially or wholly pertain to the constitution party.

"With respect to those deported, whom the Epoca calls 'unhappy,' we confine ourselves for to-day to declaring that they were for the greater part the prime actors in the drama whose successive stages Spain will ever remember in the names of Montilla, Seville, Alcoy, Cadiz, Malaga, Valencia, Catalonia, and so many others, persons whose lot we pitied then and pity still more now, without other journals being able to outdo us in this feeling of pity, but persons also who had contributed collectively to perpetrate those grave acts, and who could not have been in every case submitted to the investigation and judgment of a court, because the courts for a long time lacked the means and forces necessary to inquire into and even decide upon the cases in which their action would have had to be concreted upon determinate individuals, and many more months would infallibly have been required to enable the judges to pronounce any exemplary sentence, when so many, so severe, and so energetic examples were demanded by the state of the country.

"This being stated, we have only to add that of the deportations mentioned, which were unknown, it is said, to all the country, full knowledge was possessed by all the prominent political men, even to the leaders of the most advanced parties, it having sufficed on several occasions that the most pronounced republicans should give assurance that a deported person was banished solely because of his political opinions, to have the order revoked, and even to have the voyage interrupted, after it had begun, by means of a telegraphic communication.

"In order to respond to the fullest extent respecting the assertions made by the "Imparcial," and to know how far the decisions of the governments constituted during the year 1874 were influenced by the state of slavery in which the press then was, it would be necessary for us to know how many and which journals were suspended, fined, or seized because of taking up the question of the deportations. We much fear that the number will be found small; perhaps that not one journal will be found in that category, and this notwithstanding that up to the beginning of the present year there were published various republican newspapers, and one which, without declaring it, was Carlist.

"In return, we recall that many journals, toward the end of 1873, and a considerable number after the commencement of 1874, demanded, at all times and in every possible

tone, persevering energy, salutary rigor, decision, and untiring activity, until the Spanish social structure should be restored to complete tranquillity and genuine quietude. But not in vain do the times pass and change.

"Our readers assuredly will not expect that, imitating the *Epoca*, we shall compare those circumstances and the motives of those deportations with the situation in which the country is to-day and the banishment of professors."

[Inclosure 4 in No. 337.—Translation.]

### DEPORTATIONS TO THE PHILIPPINE ISLANDS.

[From "*La Epoca*," Madrid, April 9, 1875.]

From all this it results that, in 1873 and 1874—that is to say, in the two years of the Spanish republic—deportations took place while Mr. Garcia Ruiz was minister of gobernacion, before he held that office, and after he held it. Political prisoners and those suspected of common crimes were deported. Deportations were ordered by the captains-general and by the council of ministers. The Cantonalists were sent to Ceuta. There were embarked and taken to the Marian Islands those re-convicted of theft and convicts on ticket-of-leave, as well as persons deemed to be of ill life and manners. The initiative of this system was taken under the government of Mr. Castelar, and it was broadened and strengthened by that created on the 21 of January, and by that which came to an end on the 30th of December; and still these statistics, so varied and so abundant in data of different kinds, are not complete unless they be limited exclusively to the enforced voyages to the other side of the waters, since, as one of our colleagues opportunely recalls to mind, there do not figure in these statistics the enforced voyages made, for example, about a year ago, by Mr. Cazorro and Mr. Chico de Guzman.

And the most notable thing about it is, that all this has been, for the greater part, unknown to the public, the present polemic having been needed in order to disclose such charming facts and such beautiful theories.

There is nothing left to say now concerning illimitable rights and the minute guarantees with which they were surrounded by the constitution of 1869; the only novelty is in the unembarrassed freedom with which Mr. Garcia Ruiz considers as deportable matter, by mere executive order, reconvicted thieves, ticket-of-leave convicts, and people of ill life and manners. The partisans of the revolution, in spite of the importance they gave to questions of penal right, even to the point of raising some of their number to the highest positions in the state for the single merit of professing determinate ideas thereon, have not done anything to ameliorate the penitentiary system. Their pompous programmes, their severe inflexibility, which carried them even to suppressing the right of pardon, their exaggerated theories as to the nature of the penalty of which they devised the enormous paradox of regarding as a right of the criminal, were about on a par with what we read in the communication of Mr. Garcia Ruiz. They did not establish penitentiaries in the peninsula and in the colonies, but they dragged to the Marian Islands hundreds of persons not judicially condemned. It was never seen that the new legal recourses invented in order that Spanish citizens might exact responsibility of the governmental and judicial authorities was a practical truth, and, on the contrary, one of the oldest and most constant defenders of the revolutionary doctrines believes that when an attempt is made to know what were the guarantees of security when the deportations were decreed, the public can be satisfied with the statement that the names of the victims were read out by one in council of ministers, or the other statement that not even the minister of gobernacion assumed the responsibility and the direction of what was decreed in so delicate a matter. Nothing, in more than six years, was executed or even attempted in order to imitate in our country the experiments and the institutions which in other countries have had for their object the rehabilitation by means of honest labor, and through the normal conditions of family and of society, of those who are set at liberty from convict prisons; and, instead of this, we find that, without trial and without judicial intervention, executive condemnation to the most cruel punishments was pronounced against those who had already fulfilled the penalties imposed on them conformably to law. By their manifestations of horror at the death-penalty and at all life-sentences, they initiated grave conflicts, they fomented the indiscipline of the army, and they aroused more than one political crisis; but at the same time that they denied to society the right of self-defense against the criminals duly declared such by the tribunals of justice, they gave to the Spanish government the power of imposing upon Spanish citizens whose delinquency was not proved a punishment which in very many cases, perhaps in a majority of the cases, would cause the death of the persons so punished.

If experience does not serve to make the people understand the revolutionary leaders, it will not be because the lesson has failed to be instructive and eloquent.

No. 532.

*Mr. Fish to Mr. Cushing.*

No. 157.]

DEPARTMENT OF STATE,  
Washington, April 12, 1875.

SIR: Your No. 316, wherein you treat of the diplomatic situation in Spain, has been received.

The practice of the United States in recognizing that government of a people which is the *de facto* one, is founded upon the only true and wise principle and policy.

I am, &amp;c.,

HAMILTON FISH.

No. 533.

*Mr. Cushing to Mr. Fish.*

No. 379.]

LEGATION OF THE UNITED STATES,  
Madrid, May 6, 1875. (Received May 27.)

SIR: The papal nuncio, Monsignor Simeoni, archbishop of Chalcedonia *in partibus*, arrived here on the 1st instant, and on the 3d was officially presented to the King.

This event is regarded by the friends of the government as an advantage gained by them against the Carlists, and as an additional step toward the reconstitution of public authority as personified by D. Alfonso.

The discourses of reception on both sides were prepared with much discretion, and do not indicate what concessions on the part of Spain, if any, will be requisite to replace her in her old relation with the See of Rome; but the question, of course, pre-occupies public attention. I received, on the 3d instant, copy of a circular, purporting to be addressed, in the name of the nuncio, to the members of the diplomatic body, inviting us to an official call on the 6th or 7th instant. Copy and translation are annexed. This act is in accordance with diplomatic usage, according to which a nuncio, like an ambassador, instead of first calling on the other foreign ministers, as is customary among envoys extraordinary and ministers resident, fixes a day on which he will be ready to receive their calls.

In the same spirit he has precedence even of ambassadors *eo nomine*.

This point, among others of the same class, was discussed at the Congress of Vienna, where, whilst all the Catholic powers admitted this precedence as matter of traditional and established right, the powers of Protestant confession, like Great Britain, or of the Greek, like Russia, without admitting this precedence of the Pope's diplomatic representative as an absolute right, yet conceded it as a matter of courtesy. (Martens, Guide Dipl., i, 237.) The force of this rule was admitted by Lord Palmerston so late as 1849, (Calvo, t. i, 562, note,) and it has been continued until now to be observed in Europe, notwithstanding that the Pope has ceased to be a temporal power.

Although at the present time the claim of the nuncio to precedence might admit of question, not precisely on the score of religious difference, but on the ground of the discontinuance of political and diplomatic relations between the Pope and all the non-Catholic, and some



even of the Catholic powers, and that therefore the existing representation of the Papal See is purely ecclesiastical, yet it did not seem to me worth while to raise the question on the part of the United States, seeing that we, having no state church, have no occasion to be influenced by that matter, any more than by the forms of government, in our intercourse with foreign powers. Indeed, the recent introduction of non-Christian powers—China, Turkey, and Japan—into the circle of the European and America powers, has effectually served to deprive religious differences of their previous formal authority as the international regulator of diplomatic intercourse among the states of Christendom. I should not have hesitated, therefore, if standing alone, to conform to the precedent set by the congress of Vienna, as still constituting a rule of diplomatic usage and courtesy in this behalf. Nevertheless, it seemed to me convenient to explore the question. I did so; and found that the ministers of Great Britain, The Netherlands, and Sweden and Norway, had concluded to act on the rule of Vienna, although two of them at least, Great Britain and Sweden, have state confessions adverse to that of the Papal See. But, indeed, as these two governments were signatories of the regulation of Vienna, (Du Clercq ii, 179,) it was almost a matter of course on their part to accord precedence to the nuncio on this occasion. And thus my scruples on the subject, if any had existed, would have been removed. I therefore called on the nuncio this afternoon, according to invitation, and it happened by accident, not previous arrangement, that the Baron d'Uttersum, representing The Netherlands, and myself representing the United States—that is, the only two governments here which are neutral and purely tolerant in the matter of religious confessions—were not only the first to call, but found ourselves together in the reception-room of the nuncio. This casual concurrence in action was quite agreeable to me. In our two cases, at least, (whatever may be said of some others,) the course adopted has been strictly logical, and in accordance with diplomatic precedent and usage, and with the religious attitude of our respective governments. Independently of which, there is a consideration which overrides all others, and which also covers the case of the ministers of Great Britain and of Sweden and Norway.

The nuncio is the ambassador of the Pope, though with a special title. Ambassadors, legates, and nuncios are classed together in the regulation of Vienna, on the very theory of personal representativeness. Now, since the time when the barrier between the Christian and the non-Christian powers was broken down by Sir Henry Pottinger and myself in the matter of China, and by the conferences of Paris in the matter of Turkey, (to say nothing of Japan,) it is not to be doubted that if the Ottoman Sultan, who is the religious head of Islam as well as Emperor of Turkey, should send one of his pachas here commissioned as ambassador, we should accord to him the honors of that rank. *A fortiori*, we may do so as respects the nuncio. In fine, we might eliminate from the problem the element of religion, and then the case would be that of a personage recognized as an ambassador by the court at which we are accredited, and as such entitled at that court, by practice and precedent, to the consideration of an ambassador.

On those premises but one question could be plausibly made, to wit, whether, as before suggested, in the existing state of things, the Pope, by losing his temporal power, has lost the traditional and pre-established right to send an ambassador. As to that point, it is difficult to see what authority the United States have to control in this respect the action of the various powers, including Spain, which chose to continue diplomatic

relations with the Papal See. I learn that, on special instructions, Russia holds aloof; but it is understood that the German chargé d'affaires will call in the absence of the minister, Count Hatzfeldt, and that the Italian chargé d'affaires would have called if invited. The nuncio, as is common with the superior Catholic clergy, is a highly educated and gentlemanly man of the world, about sixty years of age, passing readily, during the half hour of my being in his company, from Italian speech with members of his suite to French with Mr. d'Ittersum and to Spanish with me, and either leading or following gracefully, as the turn of conversation might require, in remarks on the affairs of the United States, of The Netherlands, and of Spain. I add, that all the foreign ministers (except of course myself) appeared in full uniform; thus, in accordance with European usage, expressly recognizing the sovereign representative character of the nuncio.

I have, &c.,

C. CUSHING.

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[Inclosure 1 in No. 379.—Translation.]

*Mr. Poggioli to Mr. Cushing.*

MADRID, May 3, 1875.

Monseñor Giovanni Simeoni, archbishop of Chalcedonia, has presented to-day to His Catholic Majesty his letters of credence in quality of nuncio of the Holy See; and it will be extremely agreeable to him to receive Messieurs the members of the diplomatic corps at the palace of the apostolic nunciatura the 6th and 7th instant, from 2 to 4 o'clock in the afternoon.

The undersigned, secretary of the nunciatura, has the honor to communicate this to his excellency the minister plenipotentiary of the United States, and embraces with pleasure this occasion to signify to him sentiments of respectful consideration.

PIETRO POGGIOLI.

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No. 534.

*Mr. Cushing to Mr. Fish.*

No. 408.]

LEGATION OF THE UNITED STATES,  
*Madrid, June 1, 1875.* (Received June 21.)

SIR: I beg leave to ask your attention to a question of precedence as to which some doubt exists here, but which may possibly have been considered and settled at Washington, namely, the relative places, on ceremonious occasions, of the minister of foreign affairs of any particular government, whether monarchical or republican, and the foreign diplomatic ministers accredited to that government. The matter is treated, but not very satisfactorily, in some of the text-books. Calvo, the latest and most distinct, refers to it in the following terms:

Hors de la cour, les ambassadeurs cèdent le pas aux ministres des affaires étrangères et le conservent dans quelque lieu qu'ils se trouvent sous tous les autres dignitaires et fonctionnaires du pays où ils résident. Ces derniers jouissent au contraire, par courtoisie, de la préséance sur tous les autres membres du corps diplomatique, lorsqu'ils sont dans la maison d'un représentant étranger. (Calvo, i, 579.)

The language of this passage is neither complete and precise, nor perfectly free from obscurity.

The first of the two sentences seems to speak of ambassadors in the restricted sense, and to say that they, although direct representatives of the sovereign, yield precedence to the minister of foreign affairs everywhere except at court, where, it is implied, the minister of foreign affairs takes precedence even of ambassadors; and that ambassadors have precedence of all other local public functionaries. Of course, all foreign ministers below the rank of ambassador would yield to the minister of foreign affairs, according to Calvo. But what is the general rule in this relation as respects the precedence between foreign ministers below the rank of ambassador and high functionaries other than the minister of foreign affairs? That is left in doubt in the first sentence, which implies that such foreign ministers have precedence generally, in expressly stating that they yield it in the single case of such functionaries being in the house of a foreign representative, when, it is stated, they take precedence of all foreign representatives except ambassadors. I do not perceive any reference to this particular point in Marteau; but he disposes of an allied question as follows:

Il est d'un usage généralement é tabli, dans toutes les cours de l'Europe, de réserver au corps diplomatique, lors des grandes fêtes de gala ou des solennités publiques, les premières places après celles qui sont destinées aux princes et aux princesses du sang. (Guide Dipl., i, 154.)

In so far as regards practice here, two facts have occurred bearing on the question since the accession of D. Alfonso. At the ceremony of the Lavatorio, the tribune of the foreign representatives was on the right hand of the Princess of Asturias, that of all the members of the cabinet on the left.

At the state dinner given to the diplomatic corps, the minister of foreign affairs was placed below all the diplomatic representatives bearing the title of minister. I do not find anything to throw light on this question in Dana's Wheaton, Pradier Fodéré's Vattel, Ott's Klüber, Phillimore, or any other book of authority accessible to me here; but in a little-known work of secondary importance, entitled "Tratado de Jurisprudencia Diplomático-Consular," by D. Agustin de Letamendi, occurs a pertinent statement, the original of which is annexed hereto as appendix, and which in translation reads as follows:

In May, 1840, Baron Alleye de Cyprey, envoy extraordinary and minister plenipotentiary of France in Mexico, went, as did all the other members of the foreign diplomatic body, by official invitation, to the grand service which was solemnized in the cathedral for the consecration of the most illustrious Señor Archbishop Posadas, and upon his excellency's entering the church, he noted that the minister of relations of the republic, Don Juan de Dios Cañedo, occupied the *préséance*, or place which preceded the seats intended for the diplomatic body, and addressing himself to the Mexican minister, the French minister said to him in French and in a loud voice, "I am surprised at you, having been in Europe, do not know the place which corresponds to you; those who represent the kings of Europe do not allow themselves to be preceded by the President's minister of relations; between the chief of the republic and me, who represent the King of the Frenchmen, you should not occupy the seat you occupy." Señor Cañedo knew not what to answer, and Baron Alleye de Cyprey, without accepting the seat assigned to him, said to the members of the legation who accompanied him, "*Messieurs sortons, suivez moi.*" And they all withdrew from the church, to the notable offense of the showy and brilliant assemblage. This event gave occasion to heated and not very decorous correspondence between the legation of France and the Mexican government, which made formal demand on the cabinet of Paris for the removal of its agent in Mexico; but all was in vain, the French government sustained Baron de Cyprey, its agent, and approved his conduct.

Sr. de Letamendi professes to have been an eye-witness of this incident. I do not remember to have heard of it at the time, and do not find it alluded to in our public documents. Mr. Powhatan Ellis was

then minister of the United States in Mexico, and may have reported the incident to the State Department.

Now, on this occasion, did the Baron Alleye de Cyprey mean to assert the old but perfectly exploded doctrine of the precedence of the representative of a king over the representative of a republic? It may be so; for certainly Sor. Cañedo was quite as much the representative of the sovereignty of the Mexican Republic as the Baron Alleye de Cyprey was of the sovereignty of the King of the French. And in this view of the subject, did the latter presume on the fact that the Mexican Republic was at that conjuncture suffering under the depressing effect of its recent invasion by the French? Or did the latter intend only to assert the doctrine laid down by Martens in the passage above cited, but express himself loosely and impertinently in putting forward, without reason, the expression "the kings of Europe," as if that were of the essence of the question, when it was not, and the only pertinent consideration was that of the courtesy due to all independent and sovereign states. Considerations of this order hardly rise to the dignity of questions of international jurisprudence, but they have their importance, partly because good manners and good taste in deportment exercise influence in social, and therefore in diplomatic, intercourse; and partly because the assertion of superiority on the one side necessarily implies derogation of it on the other. Hence, while not admitting that, according to the celebrated phrase of a great personage, diplomacy is merely "*l'art de se bien cravater*," and whilst avoiding any petulant or contentious self-assertion, it seems to become me to take care not to concede, in act or word, that forms of government or titles of sovereign authority shall draw after them any depreciatory consequence as respects the United States. I therefore presume to lay such matters before you from time to time as they arise, well knowing that you will either dismiss them with a glance of the eye, or bestow thought upon them, according as they may or may not deserve attention.

I have, &c.,

C. CUSHING.

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No. 535.

*Mr. Fish to Mr. Cushing.*

No. 187.]

DEPARTMENT OF STATE,  
Washington, June 4, 1875.

SIR: Your dispatch No. 379, on the subject of the reception of the Papal nuncio, and your visit to him, has been read with much interest.

While the probabilities seem to be almost entirely against the possibility of the restoration of any temporal power to the Pope, he is still recognized as a sovereign by many of the powers of the world, which receive from him diplomatic representatives in the person of either a nuncio, or a legate, or possibly in some other capacity, and which powers also accredit to him certain diplomatic representatives.

With all such arrangements this Government abstains from interference or criticism. It is the right of those powers to determine such questions for themselves; and when one of them, at whose court this Government has a representative, receives a representative from the Pope, of higher rank than that of the representative of the United States, it becomes the duty of the latter to observe toward the Pope's representa-

tive the same courtesies and formality of the first visit, prescribed by the conventional rules of intercourse and ceremonial, and of the precedence of diplomatic agents, which have been adopted, and almost invariably acted upon, for the last sixty years.

In the case which forms the subject of your very interesting dispatch, you pursued the course which alone would have been expected from one of your accustomed prudence, and of your experience and familiarity with the proprieties of such occasions.

I am, &c.,

HAMILTON FISH.

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No. 536.

*Mr. Cushing to Mr. Fish.*

No. 411.]

LEGATION OF THE UNITED STATES,  
*Madrid, June 7, 1875. (Received June 29.)*

SIR: I annex hereto copy and translation of a decree of the 4th instant, on the subject of unofficial, as distinguished from official, instruction. It is complementary to the decree communicated and commented on in my No. 345, and further elucidated in my No. 354; and while it serves to confirm the appreciations of the question set forth in those dispatches, it completes the contradiction of the misrepresentations on the subject which a few busy persons, interested in maintaining abuses, had propagated in Paris and London. Prior to the issue of these decrees, public instructions in Spain and preparation for professional pursuits were in the same state of anarchy, imperfectly attempered by occasional spasms of arbitrariness, with everything else in Spain. What was called *free instruction* was a mere cover for the fabrication of advocates, physicians, and other professional persons who were making display of degrees gained without serious study, and who, while destitute of any real instruction, were imposing themselves on the community, to its prejudice and to that of all true science and merit. The evil attained such proportions that while the competition for professional employment had enormously increased, it had become the practice for the government and the municipalities, in advertising for applications, to give notice of the exclusion of aspirants of this class. The present decree, while it completes the system of professional instruction, legalizing private institutions in which all persons are free to teach and to learn outside of the official institutions, makes provision to guard against the abuse of mercenary trade in diplomas on the part of self-constituted professors, who have not taught, and pretended students who have not learned, while otherwise leaving the entire field of knowledge open to all the world, unembarrassed by the limitations which rightfully apply to the public institutions maintained by the state.

I have, &c.,

C. CUSHING.

[Inclosure 1 in No. 411.—Translation.]

*Decree of June 4, 1875, regulating professional instruction.*[From the "*Gaceta de Madrid*," June 5, 1875.]

## PREAMBLE.

## MINISTRY OF FOMENTO.

SIRE: Upon the initiation, in the decrees of July 29 and September 29, 1874, of the re-organization of the public studies, without prejudice thereby to the liberty of instruction, the government of that epoch announced its purpose to give validity to those studies which might have been privately pursued by means of a series of examinations which it did not eventually determine, and great has been the public expectation and continual the incitations and the inquiries addressed to the minister of fomento with respect to that important matter. The moment has at length arrived for satisfying this desire, maintaining, as the government of Your Majesty solemnly has offered to do in previous documents, the concurrence of private studies side by side with the official courses, without prejudice to the guarantees and proofs of fitness which it is indispensable to require in order that all the titles conferred by the state may have the same value and inspire equal confidence in the public. With this object the undersigned minister, aided by the efficient and intelligent co-operation of the council of public instruction, has studied the two principal points of the examinations and literary exercises to which are to be submitted those students who, having pursued private studies, seek to obtain academical degrees, and of the organization of the juries before which those examinations are to take place, and has the honor to-day to submit to the superior judgment of Your Majesty the result of his labor.

In that which concerns the organization of the tribunals, in view of the difficulty of finding the large number of persons competent for the discharge of a mission of such importance which would be necessary, the undersigned believes it expedient to adopt in this instance the criterion which has prevailed in the existing regulations for competitive examinations for professorships, proposing that the said tribunals shall operate only in Madrid when treating of the proofs of aptitude for obtaining degrees and titles in the several faculties and in the superior or professional school, and in the capital of the university district wherein there may be faculties or chairs of letters and sciences pertaining to the object of the examination, when treating of the degrees of bachelor and of titles of professional specialties. It has also appeared just to give participation in the juries in almost equal proportion to the official professors and to the representatives of private instruction, provided, however, that the latter possess an academical diploma guaranteeing their fitness for so difficult a charge. Unofficial instruction may in this manner have access to the juries, and the government proposes to give attention to it in proportion to the development and importance which it is steadily acquiring, exercising to the benefit of its directors and professors of the several faculties the free choice which is reserved to it in the proportion fixed in the present decree. In that which concerns the proofs of sufficiency which ought to be exacted of the applicants, it has seemed wisest to divide them into two classes: partial and analytical with respect to the courses of study of each group, concrete and synthetical for the academical degrees and for titles of professional specialties. The applicants, therefore, will have to submit themselves in the first place to examination upon courses of study, and after having obtained approbation in all of those courses, to the exercises corresponding to the respective degrees sought. All these acts shall be public, and the lessons upon which the questions of the judges are to be based shall be drawn by lot, conformably with the method adopted for official examinations by the decree of May 14. The qualifications required ought also to be equal to those which govern official instruction. And lastly, assuming the great difficulty which exists in the way of holding permanent tribunals, the examinations for giving validity to private studies shall be limited to two epochs of the year, distinct from those designated for the schools of the state.

Such, sire, are the bases upon which it has appeared to the government of Your Majesty fitting to found a genuine and profitable innovation in the legislation of public instruction, without the prejudices for society in general and for the students in particular which were inseparable from the system of absolute liberty. Without full confidence of having attained this end, but assured of having endeavored to do so, and of having taken the first step in a path which may lead to important and solid advancements, the undersigned has now the high honor of submitting to Your Majesty the following project of a decree.

Sire, at the royal feet of Your Majesty,  
The minister of fomento,

THE MARQUIS DE OROVIO.

MADRID, June 4, 1875.

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## ROYAL DECREE.

In attention to the reasons set forth to me by my minister of fomento, I hereby decree the following:

ARTICLE 1. The tribunals which are to have cognizance in the examinations and literary exercises to which are submitted those who, having pursued private courses of study, make application to receive academical degrees, shall be held only in Madrid when treating of the proofs of aptitude to obtain degrees and diplomas in the several faculties, superior schools, and professional schools, and in the capitals of those university districts wherein there may be faculties or professorships of letters or sciences analogous to those which may be the subject of the examination when treating of the degrees of bachelor and diplomas of professional specialties.

ART. 2. The tribunals shall sit in the months of April and November of each year, during the time necessary for the termination of the examinations and exercises of degrees and diplomas of the candidates presenting themselves.

ART. 3. The number of voting members who are to constitute the tribunals of examination shall be five in those corresponding to faculties and superior or professional schools, and seven in those pertaining to the degree of bachelor and diplomas of professional specialties.

ART. 4. A member of the council of public instruction, who shall not be a professor in active service, shall preside over the tribunals of examination corresponding to faculties and superior or professional schools; a person distinguished for his learning, who shall not belong to either public or private instruction, to be selected by the government from among three proposed by the rector of the district, shall preside over those of the degree of bachelor and diplomas of professional specialties.

ART. 5. Of the four voting members who, with the president, are to form part of the tribunal of superior and professional studies, two shall be numerary professors of courses of study comprised in the group under examination, and the remaining two shall be freely chosen by the government among persons who, while not belonging to the official system of instruction, are possessed of the requisites of being members of the royal academies, doctors, licentiates, who may hold corresponding superior diplomas, exercising their profession with recognized credit, or who may be dedicated to private instruction with superior academical diploma. The government shall designate also two voting members besides, one of each class, who may be substituted for the foregoing in case of absence, sickness, or vacancy.

ART. 6. Of the six voting members who, with the president, are to form each one of the two tribunals for the degree of bachelor or diplomas of professional specialties, three shall be numerary professors of corresponding courses of study, and the remaining three shall be freely chosen by the government among persons who, while not being enrolled among official professors, may be doctors or licentiates in letters or sciences, according to the group of courses of study, who may hold diplomas of professional specialty corresponding to the examination, if this be for such specialties, or diplomas of a faculty or of architect, for those corresponding to the sciences. The government shall also designate two voting members besides, one for each class, who may be substituted for the foregoing in case of absence, sickness, or vacancy.

ART. 7. Until the programmes, whereof the fifth article of the royal decree of February 25 last speaks, shall be published, the tribunals shall limit themselves in the examination of the candidates to the extension given to the corresponding courses of instruction in the universities, superior or professional schools and institutes.

ART. 8. The proofs of sufficiency shall be partial and analytical with respect to the studies of each group, concrete and synthetical with relation to the academical degrees and professional diplomas.

ART. 9. The candidates shall satisfy one-half of the matriculation fees prescribed by the laws for the official alumni, making the payment, upon approbation, when the examination of all the groups are terminated and before the exercises of the degree. The candidate, on presenting himself to the tribunals, shall produce proof that he has paid twenty-five pesetas for examination fees in each group of courses of study or of exercises for degrees.

ART. 10. The candidates shall, before the proofs of aptitude necessary to obtain a degree or diploma, produce evidence that they have received that which precedes it in the academical series, conformably to the prescriptions of the law.

ART. 11. The candidates shall be submitted, first, to examination in the several courses of study; second, to the exercises of the respective degree after having been approved in all the preceding examinations.

ART. 12. The examinations upon the several courses of study shall be conducted in the different academical studies in the following groups and form:

## HIGHER INSTRUCTION—DEGREE OF BACHELOR.

*First group.*—Primary instruction, Latin and Spanish, rhetoric and poetry.

*Second group.*—Geography, general history, history of Spain, psychology, logic, and ethics.

*Third group.*—Arithmetic and algebra, geometry and trigonometry.

*Fourth group.*—Physics and chemistry, natural history, physiology and hygiene.

DIPLOMAS OF PROFESSIONAL SPECIALTIES—EXPERTS.

*First group.*—Primary studies and preparatory or preliminary courses of studies essential to the special branch.

*Second group.*—Theoretico practical courses pertaining to such speciality.

*Third group.*—Practical studies completing the same.

PROFESSIONAL TITLES.

The groups of courses of study corresponding to these respective titles shall be made in the order of, and with subjection to, the programmes published on the 20th of September, 1858.

DEGREES OF FACULTIES AND TITLES OF SUPERIOR SCHOOLS.

The groups of courses of study which constitute the faculties and superior schools in addition to the sections which each one may have, shall be those which may be permitted by the conception and nature of its teachings, the first group being composed of the courses of study of the preparatory year or years in the faculties and schools which now exist, and the remaining groups comprising the concluding courses according to the respective matters taught.

ART. 13. The candidates for degrees or diplomas under the prescriptions of this educational scheme shall perform in equal form and number the exercises which the laws prescribe for those of the official system, paying the same fees as the latter for the issue of the diploma.

ART. 14. All the ceremonies shall be public, and announced beforehand on the bulletin-board of the respective establishments.

ART. 15. The minimum of duration of the examination shall be twenty minutes for each course of study comprised in the group, and an interval of eight days shall elapse between the several sessions.

ART. 16. At the time of each examination there shall be publicly drawn by lot four lessons from the general programme of each course of study, which shall be the subject of the questions put by the jurors.

ART. 17. Approbation in any one exercise shall not be sufficient by itself alone to give academical validity to the courses of study comprised therein.

ART. 18. The qualifications of the examinations shall be equal to those of the official alumni, and the candidate who may be suspended can only on payment of new examination-fees repeat his examination at the meeting next following. Suspension in any one group of courses of study or exercise twice in succession annuls the approbation of all the groups and exercises preceding it in the respective academical degree.

ART. 19. On the termination of any examination or exercise the decision shall be immediately made public, and that of suspension, which may be incurred by the candidates for approbation in the higher grades of study, must be communicated officially to the other universities wherein like examinations may be held, in order to prevent the candidates from repeating new examinations during the period of suspension.

ART. 20. The secretaries of universities or corresponding establishments shall draw up under their own responsibility the *expediente* of identification of the candidate, it being the duty of the same to present it to the tribunal of examination, he being, however, authorized to delegate his powers to the chief clerk in the secretary's office of the respective faculty, school, or institute.

Given at the palace June 4, 1875.

ALFONSO.

The minister y fomento,  
MANUEL DE OROVIO.

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No. 537.

*Mr. Cushing to Mr. Fish.*

No. 421.]

LEGATION OF THE UNITED STATES,

Madrid, June 19, 1875. (Received July 2.)

SIR: In meditating on the aspects and chances of existing relations between the United States and Spain, which subject occupies me by



preference the whole time, my thoughts naturally turn back to the antecedents of the subject in the past intercourse of the two governments.

It did not need this retrospect to satisfy me that, next to England and France, and perhaps next to England alone, Spain, (including her colonies in America,) has been and still is the point of capital interest for the United States. In the discovery of the New World, in the successive stages of its colonization, in the political vicissitudes its various parts have undergone, in its relation to other European governments, and especially in proportion as their power in America has diminished and ours has increased, the political condition of Spain, its interests and its purposes, have necessarily attracted the attention and acted on the public policy of the United States.

To these considerations, it seems to me, it may be attributed, in part at least, that so much of the national literature of the United States, and some of the best of it, has been dedicated to Spanish history, as exemplified in the conspicuous cases of Irving, of Prescott, and of Ticknor.

The United States and Spain were associated together in our war of Independence by the voluntary act of Spain. That association continued to be a necessary one while the greater portion of America, including our entire southern frontier, from ocean to ocean, remained subject to Spain; and the same necessity must last so long as Spain continues to hold her present place in the West Indies.

There has been continuity of identical cause for all this from the beginning to the present day, so as to make the study of that cause and of its effects in all the periods of our common history, and through all its shifting manifestations, a matter of supreme interest to the United States.

I feel oppressed, in reflecting on these facts, by the sense of the magnitude and importance of our Spanish interests, commercially and politically, with unavailing regrets that incidental and transitory questions are so much in the way here of large measures of advantage to the United States.

I solicit indulgence, then, for the present cursory review of our diplomatic relations with this country, regarded especially in the light of the professed public policy and inducements of action of Spain herself in the successive reigns of Charles III, Charles IV, Ferdinand VII, and Isabel II.

### CHARLES III.

Ample means to appreciate the character of Charles III generally, and the secret springs of his policy toward the United States, are to be found in the works of two historical writers of authority, D. Andres Muriel and D. Antonio Ferrer del Rio. We thus learn not only what Charles and his ministers declared in official dispatches, but also what they thought and said in the most intimate councils of the king's cabinet.

Charles, it is now clear, did not resolve to take our part, as many have supposed, solely or mainly in obsequiousness to France, or in execution of the treaty of alliance between the Bourbons, commonly called the "family-compact." His real springs of action lay much deeper even than those of France.

Charles III, although not a brilliant prince or a good soldier, was endowed with singular simplicity and uprightness of character, earnest in the performance of public duty as a sovereign, but animated with

still profounder convictions of dignity, conscience, and good faith as a man. He would say that such a thing might be politic for a king to do, but not fit for Carlos.

Thus, for the space of twenty-nine years, he governed Spain as an absolute prince, but with two objects constantly before his mind—the good of Spain and the personal integrity of her King.

During these years it was the dream of his life, by day and by night, to recover Spanish territory, of which, as he conceived, Spain had been feloniously robbed by England, especially Jamaica and the coast of Honduras, and Florida in America, Gibraltar and Minorca in Europe. In this fact we have the key to all his foreign policy; add to which, that he never forgot or forgave the violence done to him by England whilst he was King of Naples.

Nevertheless, although England was affording cause enough of war by her acts in Spanish America, Charles did not act precipitately nor yield to the combined instances of France and the United States until after protracted efforts to persuade the British government to enter into negotiations with the thirteen colonies, ample evidence of which appears in the Secret Journals of Congress, (Ex. gr. II, 301.)

Charles III then engaged actively on our side in the war of Independence, and with decisive influence. For the indefatigable efforts of Spain to recover Gibraltar, and her actual success in regaining, by force of arms, Minorca and Florida, and in breaking up those attempted conquests of England in Campeachy and Central America, founded on the phantom monarchy of the Mosquito Indians, which have reappeared under the same pretensions since in controversy between Great Britain and the United States, contributed potentially to compel the British government at length to recognize the independence of the United States, and to make peace with us and with our allies. (See Cantillo's review of the negotiation and its results, *Tratados*, p. 577.)

Spain, therefore, issued from that contest triumphantly, to all appearance, with room for doubt only whether it was wise, on her part, considering the magnitude of her own colonies in America, to set before them the example of the successful revolution of the United States.

If we lay aside as of doubtful authenticity the celebrated letter attributed to the Conde de Aranda, no reason will appear for inculpating the policy of Charles III on this account, earnestly as that side of the question is presented by D. Andres Muriel. Our example was not regarded at that time as being so contagious as it has been since; in point of fact, other important British colonies, which might have been supposed to be specially subject to the contagion, refused, and still refuse, to follow our example. And the better opinion in Spain is that the revolt of her American colonies is to be attributed, not to the contagion of our example, but to the dissolution of all metropolitan authority in Spain by the invasion of Napoleon, and that Great Britain did more than the United States to effect the ultimate complete separation of the Spanish colonies of America.

Such is the opinion of D. Antonio Ferrer del Rio.

At any rate the hypothesis of the indirect influence of the United States in the loss of her American colonies to Spain is so purely argumentative, and that of the direct influence of France and Great Britain is so plain and palpable, that no grudge against us in this respect seems to exist in Spain, and the consideration does not seem to have operated to our prejudice in any of our negotiations with the Spanish government, which is the important point for us.

These conclusions, favorable to us, are confirmed by the whole tenor

of the remarkable paper entitled "Confidential instruction for direction of the council of state," signed by Charles III in 1787, and made public in 1839 by D. Andres Muriel. This document shows no fear of the political example of the United States, but warns against the aggressive tendencies of our frontier population, and on this account suggests particular measures for the protection of Louisiana, Florida, and New Mexico; apart from which the "instruction" devotes only a single brief chapter to the United States, as follows :

CCCXIV. United States of America.

With the other princes and potentates of Africa, Asia, and America, we have no interests calling for particular instruction. I have intimated elsewhere, in treating of the affairs of the Indies, what ought to be done and the conduct to be followed as respects the United States. *We should handle them with policy; treat them well where to do so would not involve great inconvenience, and favor them against whoever may seek to injure them.* In matters of commerce we can concede the same to them as to the most favored nation, but that should be after regulating the boundary with our Floridas and assuring the exclusion of their issue by the Mississippi to the Gulf of Mexico. For the rest, the discords which reign in those States, by reason of the inquietude of the inhabitants and their love of personal independence, are favorable to us, and will always be cause of their debility.

Neither the *Caude de Florida-blanca*, in writing these words, it is manifest, nor Charles III in adopting them as the line of policy of himself and his successors, had any misgiving respecting the example of the United States. On the contrary, the general spirit of the "instruction" is one of well-considered friendship and good-will toward us, notwithstanding what it says on the subject of the navigation of the Mississippi, possessed on both sides (in its lower course, at least) by Spain.

CHARLES IV.

In the *Memoirs*, written by or for D. Manuel de Godoy long after the events to which they refer, indications exist of a disposition to criticise the policy of Charles III in regard to America, but nothing of this sort appears in the negotiations with the United States by the *Principe de la Paz* as the all-powerful favorite and minister of Charles IV.

Those negotiations were conducted in literal conformity with the spirit of the "Confidential instruction;" that is, in friendliness and even favor toward us, but with special attention to the boundaries of Florida, and persistent solicitude to keep shut against us the mouths of the Mississippi.

At that epoch, to wit, during the administration of Washington, the question of boundaries on the side of Florida had not become, practically, a very serious one to us, but the new populations on the banks of the Ohio, the Kentucky, and the Tennessee began at once to call for navigable access to the Gulf of Mexico at New Orleans.

For a long time the opposite pretensions of the two governments appeared to be quite irreconcilable. Neither Mr. Jay and Mr. Carmichael at Madrid during the continuance of the war of independence, nor Mr. Jay at Paris at its conclusion, nor Mr. Carmichael or Mr. Short afterward at Madrid, could overcome the objection of the Spanish government to opening the Mississippi.

But the progress of the French revolution produced a decisive change in the views of the court of Madrid. Spain found herself involved in war with France without being able to count on any alliance for the security of her vast transmarine possessions, except the very doubtful one of Great Britain. Meanwhile the United States imposed restrictions on the commerce of every power with which they had no treaty. They

were not bound by any express convention to respect the territorial rights of Spain, and their people were threatening to take forcible possession of the navigation of the Mississippi.

In these circumstances D Manuel de Godoy invited a resumption of negotiations for the settlement of all pending questions between the two governments on condition of the guarantee by the United States of the integrity of the Spanish possessions in America.

Hence came the mission of Mr. Pinckney and the conclusion of the treaty of 1795, in which the United States succeeded in fixing all the essential clauses as they desired, and without entering into the proposed guarantee, notwithstanding the great reluctance of Godoy to yield the point of a commercial depot at New Orleans.

In considering how long a period elapsed before any treaties of the same comprehensiveness were concluded between Spain and other powers, and that even to this day her commercial relations with Great Britain stand on less advantageous treaty-terms, it seems but just to recognize on this occasion the influence of the kindly sentiments of Charles III toward the United States.

#### FERDINAND VII.

Nor did the same influence fail to be felt during the reign of Ferdinand VII, disturbed as our relations were by the revolutionary movements in Spanish America, in regard to which the acts of mercenary intermeddling on the part of many persons in the United States were dishonorable to themselves and embarrassing to their Government.

In the midst of all which, however, we succeeded, thanks to the persistent good intentions of Spain, in negotiating the treaty of 1819, which not only liquidated all reciprocal private reclamations, years before we reached the same result with some other European governments, but also assured to us the acquisition of the two Floridas and the safety of our frontier on the side of the Gulf of Mexico.

It is to be remembered, also, that although Spain felt deeply wounded by the breach of faith committed by Napoleon in transferring Louisiana to the United States, yet she made no issue with us on that point; but, on the contrary, impliedly confirmed that act in the cession of the Floridas.

As well in the cession of Louisiana to France, as in that of the Floridas to the United States, we have direct contradiction of the assumption, so frequently put forward in argument by Spaniards of late, that Spain cannot part with any territory without forfeiture of honor. While such an argument might be plausibly sustained in regard to the European territory of Spain herself, it is of little force as applied to untenable possessions in America.

Accordingly, D. Andres Muriel, while he so vehemently impugns the general policy of Charles III toward the United States, yet emphatically approves the act of Ferdinand VII in ceding to us the Floridas.

#### ISABEL II.

Arrived at this point, nothing would remain but the relations of the United States to Cuba and Puerto Rico, the remnant only of those great American questions which brought the United States and Spain into association at the outset, and have so continued them into the present day.

Thus it is that D. Facundo Goñi, afterwards Spanish minister at

Washington, in his "Treatise on the International Relations of Spain," published in 1848, refers to the United States in the following terms:

The first of the independent peoples of North America to which we are allied by treaty is the Republic of the United States, which was also the first European colony which proclaimed its emancipation from its mother country, England. As early as 1795 we celebrated with the United States a treaty of peace and friendship, commerce and definition of boundaries between the territory of that republic and of the Eastern and Western Floridas, which then belonged to Spain. We subsequently celebrated with that Republic certain other treaties on incidental matters. Of this nature was the one concluded on the 11th of August, 1802, to determine the reciprocal indemnification for damages sustained by both nations during the war of the preceding years, which treaty was not ratified at that time because of various differences which arose between the contracting parties, and its ratification was only accorded as a preliminary for the adjustment of another of peace, friendship, and boundaries, signed at Washington in 1819. Finally, on the 17th of February, 1834, was celebrated the last convention for the arrangement of certain reclamations of the United States. To-day our relations with that Republic are amicable; but we ought to regard it as one of the most formidable enemies to our Antillas, because, even after having attained an already colossal aggrandizement, its tendencies toward extending itself on the Gulf of Mexico are well known.

Of the great residuary question of the Antillas, involving commercial interests of the highest importance as well as political, it would be out of place to speak here, in this paper, designed only to bring into view the conspicuous traits which have characterized the antecedent relations of the two governments, and the definite friendly direction imparted to those relations by the wise and upright King Charles III.

I have, &c.,

C. CUSHING.

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No. 538.

*Mr. Cushing to Mr. Fish.*

No. 431.]

LEGATION OF THE UNITED STATES,  
*Madrid, June 29, 1875. (Received July 19.)*

SIR: We are, according to all appearances, on the eve of interesting events, military and political, of which report will be transmitted in due time.

A decree of this date, ordering the retaliatory confiscation of the property of Carlists, is annexed in copy and translation, as one of the indications of a new stage in the war between the government of Spain and its rebellious provinces.

I call attention to the circumstance that, in the prefatory exposition, the minister of gobernacion cites and relies upon the example of the United States.

I have, &c.,

C. CUSHING.

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[Inclosure to No. 431.—Translation.]

*Decree of June 29, 1875, enforcing retaliatory measures against Carlist sympathizers.*

[From the "Gaceta de Madrid," June 29, 1875.]

MINISTRY OF GOBERNACION.

*Preamble.*

SIRE: In view of the evils of the civil war, impelled by the clamor of public opinion, and basing its act on a law of just defense, the government constituted in July of

last year decreed the embargo of the property of those who were found to be members of the factions, and of those who are aiding them with resources, news, and whatever other means they deem conducive to keep alive the flames of discord and to facilitate the impossible triumph of absolutism.

That measure, if it needed justification, would find it most fully in the example offered not many years ago by one of the nations which lead the van in civilization, and which at the time was victim of a civil war, which, like ours, disturbed its peace and menaced its existence.

It is a law of warfare, admitting of no argument, to deprive the enemy of whatever resources may strengthen his resistance; and it is an eternal law of justice, written in every code, and ever will be to exact indemnification for injuries caused by crime and violence, at the expense of the authors thereof.

For such just and evident considerations, the government of Your Majesty has maintained in force the decree of July 18, 1874.

It is necessary, however, to recognize that neither the government which framed it, nor that of Your Majesty, although for very different reasons, have carried it into effect with the rigor demanded by the character which the defenders of Carlism have impressed upon the war. The patriotic care not to exacerbate the war in the interest of the country, and in the hope that it would soon terminate, is no longer possible in view of the tenacity of the enemy and the barbarity of his acts. Within the limits which every well-ordered government finds set for its measures by the mere fact of its being such, it becomes needful, therefore, to display all the severity possible, and to proceed with inflexible resolution against all those upon whom rests any responsibility for such outrages.

Kidnaping of persons, conflagrations and shootings, perpetrated in their raids by those who style themselves soldiers of the religious faith of our ancestors; the system of extermination which they carry out against the persons and property of those who remain faithful to the legitimacy personified by Your Majesty and to representative institutions, confiscating and selling landed estates and publishing proclamations, in which they adjudicate to the provinces the property of the liberals, give their so-called authorities the right to cut down woods and plantations, and destine the proceeds of confiscations to the rebel troops, ignoring the principle of ownership as much as the most violent communists could do, all this forces the government to propose to Your Majesty several measures to yield resources to indemnify the villages and families, to render easier the administration of the estates embargoed under the decree of the 13th of last July, and more rapid the application of the proceeds of their revenues, and to put an end to the constant conspiracy maintained in the cities by those who, abusing the tolerance of the government and the noble purposes of Your Majesty, find in this impunity opportunity to favor and aid their armed coreligionaries.

Such are the ends which the government proposes to attain by means of the accompanying project of decree, which, in accord with the council of ministers, the undersigned minister has the honor to submit to the approval of Your Majesty.

SIRE: At your majesty's royal feet,

FRANCISCO ROMERO ROBLEDO.

MADRID, June 29, 1875.

#### ROYAL DECREE.

On the proposal of the minister of gubernacion, and in accord with the council of ministers, I hereby decree the following:

ARTICLE 1. Those who may acquire for themselves or for a third party, or who may authorize or intervene, directly or indirectly, in the sales of property made by the so-called Carlist authorities in the territory occupied by them, whether such estates belong to the towns or are those confiscated from private parties, shall be prosecuted and delivered up to the courts of justice in order to make effective the civil and criminal responsibilities determined in the code for the authors of crimes against property.

ART. 2. Shall be expelled from Spanish territory all those families whereof the head or any of its sons may be found serving in the factions, so soon as the authority of the respective province shall have cognizance of this fact; it being understood, for the effects of this article, that the family is composed of the persons legally subject to the control of its head. If it appear to the authority that, against the will of his parents, any one has taken up arms and joined himself to the rebels, all measures with respect to the parents shall be suspended, giving account thereof to the government.

ART. 3. All the individuals who have belonged to Carlist committees or juntas, and who shall not present themselves within the fixed term of fifteen days from the publication of this decree, before the nearest gubernatorial authority to make their submission and recognition of the King and his government, shall suffer the penalty prescribed in the preceding article.

ART. 4. For each person whom the Carlists cast into prison or hold as a hostage, the authorities shall proceed to detain, from among those known by their adhesion to or sympathy with the cause of the rebels, a number, which they shall fix according to the circumstances of each case, giving account thereof to the government. Those detained for this reason shall remain in the public jail of the respective province until the government shall determine their ultimate destination.

ART. 5. The proceeds and revenues of property embargoed, and which shall be embargoed, in virtue of the decree of July 1<sup>st</sup>, 1874, shall be destined in the first place to indemnify the injuries caused in the locality or in the province wherein they lie, and the remainder, if there be any, or the entire proceeds in other cases, shall be applied to the purposes prescribed in the decree of the 18th of July.

ART. 6. The administration of embargoed property shall, from the publication of this decree, cease to be in charge of the provincial subtreasurers, and shall be confided to administrators appointed by the minister of gobernacion, conformably with the needs of this service in each province.

ART. 7. These administrators shall be directly dependent upon the subsecretaryship of the ministry of gobernacion, to which they shall make monthly return of the proceeds of the estates placed in their charge, adding thereto a report of the state of the lands, the improvements necessary to be made therein, and all other details which they may consider opportune for the most exact and skillful fulfillment of this decree and of that of July 18, 1874.

ART. 8. The net proceeds of the embargoed estates shall be remitted by the administrators to the ministry of gobernacion, in order that the latter may determine their distribution to the corresponding uses. These funds, immediately on their receipt in the ministry, shall be deposited in special account-current in the bank of Spain, remaining at the order and charge of the subsecretary's office, which shall organize a bureau for preparing the necessary *expedientes* for the administration and employment of these moneys. The resolutions relative to the definitive employment of these funds shall be drawn up by the minister of gobernacion, in accord with the council of ministers.

ART. 9. The accounts of the administrators shall be subject to the approbation of the subsecretary's office of the ministry of gobernacion, and those which the latter office shall prepare quarterly of the employment of the funds it receives shall be submitted to the examination and approbation of the council of ministers.

ART. 10. The administrators shall receive as sole salary a certain percentage of the revenues of the embargoed estates, which shall be fixed by the ministry in each case in view of the proceeds and of the amount of the lands placed in their charge, and all other expenses of administration shall likewise be deducted from said revenues.

ART. 11. By the minister of gobernacion, in accord with the minister of finance, shall be prepared the necessary instruction for the delivery by the provincial subtreasurers to the special administrators of the property embargoed up to date.

ART. 12. The minister of gobernacion shall prepare the requisite instructions for fixing the powers, bonds, and responsibilities of the administrators and other requirements needful for the good management and employment of the revenues from embargoes.

ART. 13. By the ministry of war shall be addressed to the generals-in-chief and captains-general of the provinces in which rebel forces exist the orders conducive to the execution of this decree.

Given in the palace June 29, 1875.

ALFONSO.

The minister of gobernacion—

FRANCISCO ROMERO ROBLEDÓ.

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No. 539.

*Mr. Cushing to Mr. Fish.*

No. 435.]

LEGATION OF THE UNITED STATES.  
*Madrid, July 2, 1875. (Received July 19.)*

SIR: I think you may desire to be fully informed regarding the proposed general sequestration of the property of Carlists in arms, or actively aiding their fellows in arms, seeing that it bears on a question so much discussed by us in the matter of Cuba, and seeing also that it

professes to be in imitation of the policy of our Government during the secession war.

For this reason copy and translation of a circular on the subject in to day's "*Gaceta*" are herewith transmitted.

It is understood that, in aid of these instructions of the minister of gobernacion, the minister of war has issued instructions to the generals in the field and to those in command of military districts to effect the expulsion or deportation of the families of all active Carlists, the destruction of all crops susceptible of being utilized by the enemy, and the sequestration of the property of all persons who directly or indirectly favor the rebels, whether by seditious propagandism or with material supplies, the proceeds to be applied preferentially to the indemnification of loyal persons who may have been prejudiced in person or property by acts of the Carlists.

These measures are warmly applauded by most of the journals of Madrid, which, indeed, for some time past have been complaining of the gentleness and complaisance of the government in this respect, and exhorting to imitation of the greater energy of action displayed by our Government in like circumstances.

Announcement is made to-day of the actual application of these measures of rigor to the property and families of the Duque de la Union de Cuba, the Conde de Boruos, and other persons of distinction in Madrid.

I have, &c.,

C. CUSHING.

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[Inclosure in No. 435.—Translation.]

*Circular in reference to the execution of the decree of June 29 against the Carlists, dated July 1, 1875.*

[From the "*Gaceta de Madrid*," July 2, 1875.]

MINISTRY OF GOBERNACION.

*Circular.*

The punctual execution of the decree published in the "*Gaceta*" of the 29th of June last demands as much activity as energy on the part of the authorities at the head of the respective provinces. The government is resolved that its enactments shall not be a dead letter nor a mere menace of severities continually postponed. These measures, which the conduct of the rebels imposes as necessary, must be applied with inflexible rigor, and it is indispensable that, setting aside all manner of personal considerations, you become imbued with the determination of the government, and, without vacillations or condescensions, give it your aid by the means you may have within your reach to realize that determination. The ends of self-defense, which justify legislative embargoes, ought to be a practical truth, because if they are not to produce positive benefits, whether in the indemnification of loyal citizens or in the chastisement and breaking up of the enemy, it would be better to forego them, and not add loss of prestige on the part of the authorities to the humiliation of impassively looking on and beholding proceedings by means of which the right of property is abolished for the liberals throughout the kingdom and the complete realization of its value is attempted in the territory occupied by the rebellion.

The government, far from this, if it with pain finds itself obliged to accept such exceptional measures, understands that the unavoidable consequence thereof is to make its effects speedily felt, and in all parts the existing decrees, not being mere theoretical declarations but positive enactments, which must be fulfilled with the most persistent rigor to all their extremes.

It will not be hidden from your good judgment that embargoes of property are not solely chastisements, repressions of individual offenses; they are, before all and above all, a war measure; and that even as their justification and foundation can alone be found in the cruel necessities of warfare, so also they should reach, if they are to be



efficacious, all those who may be considered as enemies in the civil war which is destroying us, even though the place wherein they may chance to be, the circumstances which surround them, or other causes foreign to their desires, may prevent them from taking up arms or displaying the Carlist standard with their own hands.

There is now no truce for the hopes that, out of respect for the principles of humanity in the relations of the combat, the sectaries of absolutism will moderate the traditional ferocity of their proclamations and their conduct; and it is impossible for the government to renounce its superiority and fail to search out the enemies of the nation wheresoever they may be found, while the rebels are legislating for all its territory, and are executing their exactions upon the liberals to the utmost limits to which their roving bands attain.

So, then, although in the province administered by you, the Carlist party may not be actually in arms and may not appear to be perilous in this conception, it is needful that you apply to its individuals the provisions of the decree in question, so that as many as may result as being in any way identified with the rebels, whether by maintaining correspondence with them, or by receiving and propagating journals, or performing analogous acts which constitute party and political ties, shall be considered as declared enemies, and for all effects of the embargoes shall be treated as such.

The government holds a conviction that as many as may be found in this case are in nowise grateful for the benignity or tenderness with which they have hitherto been treated, since the effects of their hostility are alone limited by their impotence; and it judges that it may better to its own profit the conditions of the struggle by depriving those persons of their means of action, and no longer tolerating their hostile, thankless, and underhanded course.

Acting on these principles, the government has accepted and developed a system of legislative embargoes, and you must perforce put it into practice in your province with inflexibility and at the same time with impartiality, without affording pretext for the suspicion, even, that so melancholy a necessity of war be mixed in any case with any other ends, taking especial care that in no instance shall it be made the instrument of private vengeance or local jealousies, and punishing with extreme severity whatever abuses may chance to be committed in this matter, which unfortunately affords such scope for abuses.

To this end you are to compare and seek your information from different sources, and to incite the zeal of all the authorities and dependents of your administration, so that one and all may second you in your course of investigation into the resources of the enemy, relying upon the firmest support of the government in whatever steps you propose or adopt, founded in equity and in the real necessities of this service, whatever may be the nature of the difficulties which offer themselves in its realization.

The administration of embargoed property, now confided to functionaries dependent upon this ministry on account of the difficulties presented in giving similar functions to the officers of the treasury, demands also your especial attention, since, as the representative of the government in the province under your command, the duty is incumbent upon you of causing to be obeyed the instructions which are given you in this behalf, and to watch that all legitimate exigencies of public opinion be satisfied. In a word, these measures, by their own nature, are essentially political; and, obeying rather the procedure of circumstances than absolute principles, you should give to their execution the energy and activity which I reiteratedly recommend to you, for only thus will you respond to the design of the government, which is no other save that of abbreviating the duration of the struggle, and causing it to bear less heavily on those who adhere to the cause of order and of liberty.

By royal order I say this to you for your information and the consequent effects. May God guard you many years.

MADRID, July 1, 1875.

ROMERO Y ROBLEDO.

To the governor of the province of —.

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No. 540.

*Mr. Cushing to Mr. Fish.*

No. 448.]

LEGATION OF THE UNITED STATES,  
*Madrid, July 17, 1875. (Received August 4.)*

SIR: I communicated to you in my No. 431 copy and translation of a decree of June 29, for the embargo of all property of Carlists.

For the reasons stated in that dispatch, namely, that this decree is one of the measures of more earnest prosecution of Carlism, and that it is adopted avowedly in imitation of the policy of the United States in like circumstances, it seems to me needful you should possess a copy of the instructions just issued by the ministry of gobernacion for the execution of the decree in question, which is hereto annexed in original and in translation.

I have, &c.,

C. CUSHING.

[Inclosure in No. 448.—Translation.]

*Royal order of July 14, 1875, prescribing rules for the execution of the embargo decree of June 29, 1875.*

[From the "*Gaceta de Madrid*," July 15, 1875.]

ROYAL ORDER.

MINISTRY OF GOBERNACION.

The faithful and speedy fulfillment of the enactments contained in the royal decree of 29th June last, in reference to the embargo of property of rebel Carlists and their aiders, being of interest to the public peace and the weal of the state, His Majesty the King (whom may God guard) has been pleased to approve the following instruction for the execution of the above-mentioned royal decree.

By royal order I say this to you for your knowledge and the consequent effects. May God guard you many years.

Madrid, July 14, 1875.

ROMERO Y ROBLEDO.

The GOVERNOR of the Province of ———.

INSTRUCTION.

Approved by His Majesty the King, (whom may God guard,) for the execution of the royal decree of the 29th of June of this year, respecting the embargo of property of the Carlist rebels and their aiders.

ARTICLE 1. The minister of gobernacion, after having previously received the reports and information which he may deem necessary to insure right action, or on the proposal of the civil governors, will designate by means of royal orders the persons whose property has to be embargoed according to the tenor of the provisions of the decrees of the 18th of July, 1874, and the 29th of June of the current year.

ART. 2. The civil governors shall execute for themselves, or shall cause to be executed by means of the alcaldes of the towns, to whom they shall delegate their authority for this purpose, the orders of embargo which may be communicated to them by the ministry of gobernacion.

ART. 3. The governors, or the alcaldes, according to the cases of the preceding article, so soon as they receive the superior mandate, shall proceed to effect, without loss of time, the legal operation of embargo, after previously summoning the proprietor, custodian, or person in charge of the property. This summons may be made by means of a subpoena served by a constable, or verbally, according to the circumstances and nature of the property which is the object of the measure.

ART. 4. If it be not known in which town the persons comprised in the foregoing provisions possess property, the civil governors shall transfer the order of embargo to the alcaldes of the towns where those persons have their legal domicile or residence; and if they be absent from Spain, or be found to be in the rebel ranks, or if their whereabouts be not known, they shall communicate the order to the alcaldes of the towns wherein they may have last had their domicile, in order that the order of embargo may produce its effects so far as possible.

ART. 5. In order to effect the said operations of embargo, the authority charged therewith shall present himself in person, assisted by a notary, the secretary of the town-board of the town wherein the property lies, and three witnesses, of not less than twenty-five years of age, who shall be residents of the place and of known probity. In default of a notary, one more witness shall always attend, and the secretary shall certify the act, (or minute of the proceeding.)

ART. 6. The governor, or alcalde, accompanied by the functionaries and witnesses spoken of in the preceding article, shall draw up the act (or minute) of having effected the embargo, including therein an inventory, wherein shall appear in a succinct and orderly manner the circumstances, class, and number of the properties embargoed.

ART. 7. Of this act, which shall be made of official record in the corresponding notarial office, or which shall, in default thereof, be filed in the archives of the secretary's office of the town-board of the place in which the embargo shall have taken place, three authenticated copies shall be taken, of which one shall be remitted to the ministry of gobernacion, another shall be of record in the secretary's office of the governmental headquarters of the province, and the third shall pass to the power of the special administrator charged with the service.

At the end of each one of these three copies shall be inscribed the record of the administrator's having taken charge of the property.

ART. 8. The embargo being completed, the governor shall give cognizance thereof to the registrar, or registrars of property in the respective judicial districts, in order that these may make in their books the corresponding annotations conformably to right.

ART. 9. There shall be deemed subject to these embargoes all properties of every kind belonging to the persons designated; by the term "property" being understood:

1st. Rural or city lands, with all the appurtenances for their use, improvements, and means of working the same.

2d. Movable property and live stock.

3d. Manufacturing or industrial establishments, with all their dependencies, stock, tools, and products on sale.

4th. Revenues and public stocks.

5th. Shares of the Bank of Spain.

6th. Shares or stock of societies, companies, and mercantile and industrial enterprises.

7th. Accounts-current in societies, companies, public establishments, and business houses.

8th. Salaries, incomes, pensions, vested rights, and feudal dues, and any other rights, shares, and credits which may appear, or shall be discovered to be, the property of the said persons.

ART. 10. Of property held in usufruct, shall only be embargoed the produce or revenue.

ART. 11. The occultation of properties, incomes, stocks, accounts-current, salaries, or receipts which, in any conception, may be enjoyed by the persons comprehended in these embargoes, constituting a real fraud on the interests of the State, those who denounce such occultations shall be paid a certain percentage, which the minister of gobernacion shall fix, after hearing the governors and upon the proposal of the special administrators, taking into account the entity of the revenues or products of the property discovered and the prescriptions established by the public treasury for analogous cases.

That portion of their property occulted by the persons who shall have suffered embargo shall alone be the object of the denunciation.

ART. 12. Within the three days following the entrance into possession of the special administrators, the provincial subtreasurers shall turn over to them, under inventory and with all due formalities, the full evidence of embargoes, with capitals, values, produce, and other effects which may have taken place up to that time.

Of these inventories one authenticated copy shall be remitted to this ministry, and another shall be delivered to the governor of the province, in order that he may unite it to the general *expediente*.

ART. 13. The special administrators shall likewise remit to the ministry of gobernacion copy of the contracts for the leasing of the embargoed lands, and shall submit for the approval of the civil governor of the province the projected forms of lease of all such estates as may not be already leased.

These leases shall be made only by means of public bids, and shall be announced, with at least fifteen days of anticipation, in the official gazette of the province, or by edicts.

ART. 14. So soon as the special administrators shall have taken charge of the property hitherto embargoed, they shall deposit the capitals and values, if such be not already deposited, in the public establishment destined to that purpose.

ART. 15. The values expressed in the preceding article, and those which shall be afterward paid in like conception into the establishments referred to, shall be subject to the order of this ministry.

ART. 16. The special administrators shall pass official communications to the lessees of the embargoed lands, informing them of the obligation under which they lie to pay over to the new administration the revenues corresponding to the said property, and notifying them that in the fixed time of fifteen days they shall exhibit the cou-

tracts, or articles of lease, or shall manifest the form in which they may have effected the same.

For these purposes the special administrators shall act in agreement with the alcaldes of the respective towns, but, however, through the medium of the civil governor of the province.

ART. 17. The administration of these properties, as well as the sale of the produce and effects coming from the same, shall be conducted in strict subjection to the formalities and rules established by the ministry of hacienda for the properties of the State, subject, however, to the alterations which this ministry may see fit to make, and which shall be opportunely communicated to the special administrators.

ART. 18. The special administrators shall be dependent upon the subsecretary's office of the ministry of gobernacion; but their communications, accounts, and other documents shall always be addressed through the channel of the civil governors of the provinces, who, at the same time, while exercising vigilance and inspection over their administrations, shall lend to the same all necessary aid, proposing and reporting to the ministry whatever they may believe to be conducive to the best service.

ART. 19. The amount of the property embargoed in each province being known, the minister of gobernacion, on the proposal of the civil governors, and after hearing the subsecretary's office, shall fix the amount of security to be given by the special administrator thereof, as well as the premium which is to be received by the administration, the cost of the material and personal staff of the latter being defrayed by it.

ART. 20. All the capitals and values produced by the embargoed property shall always remain in the conception of deposit or account-current, according to the nature thereof, in the Bank of Spain or in the branch establishments of the same.

ART. 21. Of the products of the said property shall be formed a general fund, defraying therewith—

1st. The expenses of administration, personal staff, informers' rewards, and other charges comprehended in the existing enactments; and

2d. Indemnification for injuries caused by the Carlists to the towns and to private parties.

ART. 22. Every three months the subsecretary of the ministry of gobernacion shall prepare a general account of receipts and expenditures duly justified, which, with the indorsement of the minister of gobernacion, shall be submitted to the approbation of the council of ministers. After approval, it shall be published in the "*Gaceta de Madrid*."

ART. 23. The accounts being approved and the *expedientes* of indemnification being completed, the subsecretary shall issue the proper warrant of payment at the charge of the Bank of Spain.

ART. 24. In the ministry of gobernacion, and under the direct dependence of the subsecretary, shall be established in due time, by means of royal decree, a special department charged with this service, whose functions and powers shall be fixed in virtue of a system of regulations.

ART. 25. The minister of gobernacion shall issue the further general or special instructions which may be necessary for the development and execution of the different points comprehended in the orders and regulations in force in this matter.

ART. 26. The instructions of the 1st and 5th of August, 1874, for the execution of the decree of the 18th of July of the same year, in so far as they are opposed to the present instruction, are hereby repealed.

Madrid, July 14, 1875.

Approved:

ROMERO Y ROBLEDO.

No. 541.

*Mr. Cushing to Mr. Fish.*

No. 463.]

LEGATION OF THE UNITED STATES,  
Madrid, August 2, 1875. (Received August 27.)

SIR: I have been accustomed to assume that you receive from the agents of the United States in Puerto Rico all desirable information regarding the internal condition of that island, including the successive measures adopted in execution of the law of emancipation enacted by the Cortés of Spain. Hence, it has seemed to me unnecessary to occupy your time with disquisitions of mine on the general subject.

Meanwhile, my attention here has been drawn to several pertinent matters, which were noted for future possible reference as they came

before me, and which are brought back to my mind by two decrees just published providing funds for the indemnification of the masters of slaves emancipated by law in Puerto Rico.

I transmit copy of these decrees for reference, but without translation, deeming it sufficient to give an abstract of their tenor in the body of my dispatch.

After recitation of the fact of the flourishing condition of the revenues of Puerto Rico, its balances on hand, and the consequent high credit of its treasury, provision is made for the issue of seventy thousand *titulos*, with the name of "treasury bills of the island of Puerto Rico," of one hundred dollars each, with interest at 6 per cent., redeemable in yearly installments by lot, with guarantee of the revenues of the island.

These bills are to be put in the market at par, less a commission of 1½ per cent. on their negotiation.

If the entire emission shall not be taken up in three months, the balance will be disposed of in conformity with the sixth article of the law of emancipation; that is to say, "the titles will be delivered to the actual possessors of the slaves" entitled to the indemnification. To secure the means of paying these bills, the special duties on exports provided by the existing law will be continued, if necessary, for the period of seventeen years.

I transmit also, for reference, a copy of the "*Gaceta*" of October 18, 1874, containing the last budget for Puerto Rico.

So much for these decrees. I subjoin some miscellaneous observations.

All the accounts received here, whether from Spanish or other sources, concur in representing favorably the state of things in Puerto Rico.

These favorable reports cover all questions, not only of the general political and economical condition, but also in what relates to emancipation. Thus, in a report from Consul Pauli to Lord Derby, dated May 12, 1875, we read:

"I can report with confidence that the *liberto* under contract enjoys the same treatment as the free laborer, whether natives of this country (Puerto Rico) or British blacks from our own islands, except as to the fact of being bound by contract until the 20th of April, 1876. \* \* \*

On the whole, I think the abolition of slavery has been a great success, and, except to the planter, who stands a bad chance of being paid for his slaves, *has been honestly and intelligently carried out.*"

All the reports from Spanish writers, public and private, are to the same effect; and their correctness is proved by the perfect tranquillity which exists in Puerto Rico, the contentedness of the *libertos* as well as the planters, the economic prosperity of the island, the excess of revenue over estimates and necessities, and the *loyalty* of the inhabitants of all classes, to such a degree that the governor has found no difficulty in sending from Puerto Rico considerable re-enforcements for service in Cuba.

The information which Mr. Layard receives and transmits to his government is to the same effect, as shown by his dispatches communicated to Parliament.

I think it the more important to refer to these reports because of the scandalous misrepresentations of the subject which appear in the British "*Anti-Slavery Reporter*," especially in its number for October 1, 1874, in an article entitled "*Slavery re-established in Puerto Rico.*"

This *philanthropic* falsehood is based on the "*reglamento para la ejecucion de la ley de abolicion de la esclavitud en esa isla,*" (Puerto

Rico,) issued by the government of President Serrano in August, 1874, a copy of which is annexed, which *codified* and slightly modified certain provisional regulations previously issued by General Primo de Rivera in June preceding, and afterward by General Sanz, successively governors of Puerto Rico.

These regulations were somewhat criticised at the time by the *republican* press of Madrid, chiefly on the ground that they involved some variance of pre-existing contracts between the *libertos* and their masters, and the measure was denounced as *re-actionary*, without consideration whether it was in itself wise and beneficial or not and in accordance with the law of the *Córtes*.

That the "reglamento" is in substance judicious is proved by the results, as testified by Consul Pauli. But whether it was or was not judicious, in substance it was in conformity with the law of emancipation.

You, of course, were advised of all the successive steps of the measure, but they certainly did not fix themselves in the general mind. I had myself, until re-examination of the subject, supposed that the law of emancipation was in conformity with that presented to the *Córtes* by Mr. Mosquera, in December, 1872, as minister of ultramar in the Martos-Zorilla cabinet of King Amadeus.

That bill, in five short sentences, provides :

"1. Remains totally abolished, and forever, slavery, in the province of Puerto Rico. The slaves shall be free, in fact, at the conclusion of four months following the publication of this law in the Official Gazette of said province.

"2. The owners of the slaves emancipated shall be indemnified in the term expressed in the foregoing article, conformably to the dispositions of the present law."

3, 4, 5 provide for effecting the indemnification and otherwise executing the law.

If this bill had ever become a law, the several reglamentos above referred to might well have been criticised and denounced; but they are not censurable in my judgment, when compared with the letter and spirit of the actual law.

That law, passed by the revolutionary national assembly on the 22d of March, 1873, and published in the "*Gaceta*" of the 26th of March, enacts:

"1. Remains abolished forever slavery in the island of Puerto Rico.

"2. The freedmen remain obliged to enter into contracts with their actual possessors, with other persons, or with the state, for a period which shall not be less than three years.

"In these contracts will intervene, in the character of curators of the freedmen, three official functionaries, appointed by the superior government, with the name of protectors of the freedmen."

3, 4, 5, and 6 provide for the indemnification of the owners.

"7. The freedmen shall enter into the full enjoyment of their political rights at the end of five years from the publication of this law in the "*Gaceta de Madrid*."

"8. The government will dictate the dispositions necessary for the execution of this law and attend to the exigencies of beneficence and of labor which the same may render necessary."

I am not prepared to criticise the terms of this law, but if it be compared with the bill proposed by the Zorrilla-Martos government, it would be seen that the reaction or retrogression is in the law itself, not in the regulations adopted by the local governors or the superior government.

For we still have the testimony of impartial observers that the provisions of the law have "been honestly and intelligently carried out."

There is remarkable contrast between the condition of Puerto Rico and that of Cuba. In the first place, the climate and the natural conditions of life are decidedly superior in Puerto Rico to what they are in Cuba; secondly, the inhabitants are better men, physically and morally, than the Cubans. In the third place, *free* labor is and always has been the prominent fact in Puerto Rico, in the place of slave-labor, as in Cuba. According to the latest census of Puerto Rico, that of 1872, the population stood thus:

Whites .....		328,806
Blacks, { free .....	257,709	
{ slaves .....	31,635	
	289,344	
Total .....		618,150

That is to say, in a population of 618,150 souls, only 31,635 slaves, or, ay,  $5\frac{1}{10}$  per cent.

On the other hand, in Cuba we have:

Whites .....		728,968
Blacks, { slaves .....	368,550	
{ free .....	225,938	
	594,488	
Total .....		1,323,456

That is, slaves,  $27\frac{4}{5}$  per cent. of the whole population. Hence, the great *ingenios*, with their masses of congregated slaves, their cruel repression, and their *suicides*, so common in Cuba, are almost unknown in Puerto Rico.

Finally, the immigration to Puerto Rico is chiefly Catalan and Biscayan, who go there to live; while that of Cuba is largely Castilian (or Andalusian) and Asturian, too many of them having no purpose of permanent identification with the interests of the island.

Of the many inhabitants of the Canary Islands who emigrate, nearly all go to Cuba. The political influence of the *Isleños*, as they are called, is considerable in some parts of Cuba, where, also, they have propagated the defectiveness and obscurity of articulation and consequent indistinctness of speech characteristic of the Canary Islands. As the result of all these facts, Puerto Rico has always been exempt from the semi-savage spirit of chronic rebellion which has so long prevailed in Cuba, and which, whatever pretexts or even plausible reasons it may allege in the want of wisdom of the superior government, has its real causes in the character, conduct, and mode of life of the Cubans themselves, as demonstrated by the opposite state of things existing in Puerto Rico and the consequent peacefulness, contentedness, and prosperity of the lesser Antilla.

I have, &c.,

C. CUSHING.

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No. 542.

*Mr. Cushing to Mr. Fish.*

No. 520.]

LEGATION OF THE UNITED STATES,  
*Madrid, September 14, 1875. (Received Oct. 5.)*

SIR: I hasten to send to you a document of great importance in itself, which already produces much emotion and commotion, and which is calculated to have serious effects on the present fortunes of Spain.

It is a circular addressed to the bishops of Spain by the papal nuncio, in the name of the Pope, and of his mere authority, denouncing the clause of the proposed constitution in reference to religious toleration, and insisting not only on absolute religious unity in matters of faith, but also on the prohibition of any instruction, public or *private*, other than in conformity with the dogmas of the Roman Catholic Church.

Its premises purport to be the stipulations of the last Concordat between the Papal See and the Spanish government.

It is the more odious to the public sense in that it is an act of intrusion in the domestic affairs of the country, unauthorized by the government, and such as would not have been endured by Charles III, or even Philip II.

It will complicate the relations of parties within the circle of the adherents of D. Alfonso, encourage the Carlists, animate the republicans, and add fuel to the smoldering discontent which already inflames the Spaniards.

\* \* \* \* \*

I am, &c.,

C. CUSHING.

[Inclosure in No. 520.—Translation.]

*Circular of the Papal Nuncio at Madrid addressed to the Spanish bishops.*

[From "*El Pabellon Nacional*," September 13, 1873.]

APOSTOLIC NUNCIATURE.

Most ILLUSTRIOUS SEÑOR:

SIR: Having come to the cognizance of the Holy See, the project of constitution which is intended to be proposed to the Córtes, the 11th article of the same, relative to the tolerance of worship, could do no less than attract the attention of the Holy Father. In consequence, the most eminent Cardinal Secretary of State, in the name of the Holy See, has addressed to the Spanish government, through its ambassador in Rome, a reclamation, and has directed me at the same time to communicate its contents to you, which I do without delay.

The 2d and 3d paragraphs of the above-mentioned article 11, as you must know, are conched in the following terms:

"Nobody shall be molested in the Spanish territory for his religious opinions, nor for the exercise of his respective worship, saving the respect due to Christian morality.

"Nevertheless, no other public ceremonies or manifestations will be permitted, but those of the religion of the State."

The substance and form of the paragraphs transcribed cannot but be a just cause of pre-occupation, and even of complaint on the part of the Holy See, whether they be considered with relation to the concordat of 1851, which possesses the force of law in the dominions of His Catholic Majesty, or whether there be taken into account the baleful consequence which the publication of this law would draw upon the Spanish nation, which from time immemorial has been in possession of the precious jewel of Catholic unity.

And, in effect, before all, it behooves us to take note, as a point not admitting of discussion, that neither to the government nor to the Córtes, nor to any other civil power of the kingdom, belongs the right to alter, change, or modify any of the articles of the Concordat without the necessary consent of the Holy See. This maxim of law should be strictly observed in every matter which is the object of a convention: with greater reason still it ought to be put in practice in treating of a fundamental point, such as is religion, the principal basis of every well-organized social fabric.

Nevertheless, the project of a new constitution expresses itself in such wise that there is at once apparent a very great difference between its provisions and the prescriptions of the first article of the Concordat.

The latter says:

"The Apostolic Roman Catholic religion, which, to the exclusion of all other worship whatever, continues to be the sole religion of the Spanish nation, shall be forever preserved in the dominions of His Catholic Majesty, with all the rights and prerogatives which it ought to enjoy, according to the law of God and the provisions of the sacred canons."



This article expressly declares and sanctions, as is obvious, the principle of religious unity. It recognizes that the sole and only Catholic religion is the religion of the State, and it excludes the profession of any other worship. The eleventh article of the new constitution, on the contrary, does not declare that the Catholic religion is the sole and only religion of the Spanish nation, much less does it express the exclusion of all other worship outside of the Catholic religion; but in prescribing in the second part that "nobody shall be molested in the Spanish territory for his religious opinion, nor for the exercise of his respective worship, saving the respect due to Christian morality," it explicitly authorizes the exterior exercise of any catholic (*sic*) worship, thus guaranteeing the liberty of worship by means of religious toleration against the letter and the spirit of the above-cited article of Concordat.

It can never be maintained that in the first of the articles of this solemn compact a simple fact should have been merely expressed, or, rather, a wish for the preservation of Catholic unity in the Spanish dominions, instead of contracting a genuine obligation to maintain it perpetually, and not to allow in the future the existence of other worships.

The mere reading of the article cited shows clearly that even though it comprises two parts, one incidental and the other principal, both are bound together in such a way that they can neither be divided nor have substantially any other meaning than the following: that religion shall be forever preserved in Spain which is *de facto* the religion of the Spanish nation.

Thus it is that, *de facto*, the Catholic religion is the only one of the said nation, to the exclusion of every other worship, and it is expressly announced as such in the incidental proposition of the article mentioned; therefore, when it was stipulated and agreed in the principal proposition that the same religion should be forever preserved, there was equal understanding and convention respecting the mode of preserving it, with exclusion of every other worship; and in the same manner as this exclusion was in the mind of the high contracting parties, so likewise did it enter into the obligation reciprocally contracted and expressed in the article. Otherwise, the principal proposition thereof would not correspond with the incidental one, and the religion whose stable maintenance is formally stipulated in the principal propositions would not be the same one which is indicated in the incidental proposition, wherein it is determined and characterized as the only and exclusive religion of the Spanish nation.

Nay, more; the incidental portion of the article would be completely inutile, and would have no *raison d'être*, which is at variance with the nature of a solemn stipulation, with the most grave importance of the matter which is the object of the convention, and with the wisdom and prudence of the high contracting parties.

Consequently, if the exclusion of every other worship had not entered into the views and the obligations contracted by the high contracting parties, that portion of the article to which reference is made would have been omitted in like manner, as no similar clause is found in the concordats stipulated between the Holy See and other Catholic powers, which, by reason of the *de-facto* existence in their territory of liberty or tolerance of worship, were not able to stipulate or express the exclusion of every worship outside of the Catholic religion.

But it is not merely the first article of the Concordat which is impaired by the project of the new constitution.

The second article, which was stipulated as the derivation from and consequence of the first, and which, therefore, renders clear and gives force to the meaning thereof, established and provided that education in the public or private schools, of whatever class, should in every respect conform with the doctrine of the Catholic religion; to which end it was likewise stipulated, that the bishops and other diocesan prelates, whose mission made it incumbent on them to watch over the purity of faith and customs, and over the religious education of youth, should encounter no impediment or obstacle of any kind in the exercise of this right and duty.

In the third article, besides positively securing to the prelates full liberty in the use of their faculties, and in the exercise of their pastoral functions, the Catholic Queen and her government promised to accord to them their powerful patronage and support, with all the efficacy and force of the secular arm, whenever they should have to oppose the malignity of such men as might attempt to pervert the minds and corrupt the customs of the faithful, or when they should have to impede the printing, introduction, and circulation of bad and noxious books.

Now, then, it being declared in the second paragraph of article 11 of the new constitution, that no one shall be molested in Spanish territory for his religious opinions and for the exercise of his worship, saving the respect due to Christian morality, it follows, as an unavoidable consequence, that even the teaching, as well public as private, of Catholic (*sic*) doctrines may be outside of the action of the law, and cannot be impeded or repressed either by the civil or the ecclesiastical power; or, what is the same, may remain implicitly authorized and positively admitted. This indubitably involves a manifest infraction of the second article of the Concordat, wherein, in the most positive words, it was solemnly agreed that public and private instruction in all

the schools, of whatever class and category, should be entirely in conformity with the doctrine of the Catholic religion. And even though, in virtue of the eleventh article of the new constitution, there be left outside of civil and ecclesiastical action only the private teaching of Catholic (*sic*) doctrines, it is difficult to comprehend how there could take place or subsist in its full integrity and extent the free exercise of the reciprocal duties and rights formally guaranteed to the bishops in the second article, above cited, of the Concordat, of watching over the purity of faith and of customs, and concerning the religious education of youth. Neither is it comprehended how the bishops can, with good result, invoke and expect the support and the defense of the civil power against the occult machinations and dark designs of the persons interested in perverting the minds and corrupting the customs of the heedless, as well as against the clandestine press and the insidious introduction and circulation of bad and noxious books.

The foregoing considerations being set forth, it is easy to foresee the baleful consequences which may flow from the 11th article of the new constitution in case it be adopted by the Cortés, especially as it is sought to introduce an ominous principle in an eminently Catholic nation, which, at the same time that it spurns the liberty or tolerance of worship, begs with a choking voice (*á voz en cuello*) that there be re-established in Spain her traditional religious unity, incarnate, if it be allowable to speak thus, in her history, in her customs, and in her glories.

And let it not be forgotten that the course of the preceding governments in ignoring her religious unity was one of the causes of the civil war which still sustains itself in some provinces of the kingdom. Because of all this, and in view of the melancholy consequences which have crept in, the Holy See has deemed it a most stringent duty to propose to the consideration of the Spanish government these brief considerations urging it not to permit the introduction of the 11th article in the project in question, because otherwise it could compromise the so-much-desired harmony between the Holy See and the Spanish government.

All of which I have the honor to acquaint you with, in fulfillment of the orders of his eminence the Cardinal Secretary of State, in order that it may serve as a guide to you in appreciating the importance with which the Holy See regards so grave a matter.

I improve this occasion to reiterate to you the sentiments of my most distinguished consideration, with which I am, your most attached and faithful servant, who kisses your hand.

MADRID, August 25, 1875.

JOHN,  
Archbishop of Chalcedony, Apostolic Nuncio.

To the Rev. Bishop of—.

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No. 543.

*Mr. Cushing to Mr. Fish.*

No. 529.]

LEGATION OF THE UNITED STATES,  
Madrid, September 17, 1875. (Received October 5.)

SIR: The circular of the papal nuncio, transmitted with my No. 520, of the 14th instant, continues to be the dominant pre-occupation of political circles here and of the government. I inclose translation of a short article of the *Imparcial*, which points to the policy of the United States in the matter of religious confessions as the only true and wise one, and contrasts it with the trouble which not only Catholic countries like Spain have in following a different course, but also Protestant countries like Prussia and the Protestant cantons of Switzerland. I infer from internal evidence that the article is by D. Juan Valera, one of the most eminent authors of the present day in Spain, and who is among the contributors to the *Imparcial*.

\* \* \* \* \*  
I have, &c.,

C. CUSHING.



[Inclosure in No. 529.—Translation.]

## THE ONLY SOLUTION.

[From "*El Imparcial*," September 17, 1875.]

Although the conservative parties strenuously deny it with notable pertinacity there is not, nor can there be, outside of the democratic doctrine, a plausible solution for the greater part of the conflicts which in our times disturb the peace of nations or embarrass the action of governments.

What has occurred with respect to the circular of the nuncio is an additional proof of this truth, which we take pleasure in recording. In what concerns the relations between the church and the state, in the conflicts which arise between the temporal authority and the religious element, to go far away from the democratic doctrine, through the paths followed by ultramontanes and absolutists, is to go completely astray. Let us see, if this be doubted, where and how religious conflicts occur. Do they occur in the United States? No; because there the church is an association, constituted, it is true, for the realization of the highest of human aims, but, in fine, an association with which the administrations have no other relations than those which exist between them and any other association whatever, that of protecting its liberty, affirming its independence, and assuring its respect to the laws of the land. There the church is free mistress of her own destinies and apt to realize them as she may deem most opportune. There the state is sovereign, lives in the integrity and fullness of its rights, and the civil power cannot be confronted, as among us, through a false conception of the two powers, by a religious power as high as itself, as sovereign as itself, and between which two powers it is more than difficult, it is impossible, that daily differences shall not arise. Do conflicts occur in Germany? Yes; because the imperial government, which has had courage enough to fix the limits of the religious sphere of action in recent laws, lacks what is needful to enable it to forego intervention in the Catholic and Protestant churches, and so leave them to live free and independent without its tutelage, which is harmful to religious interests, without its tutelage, which is a cause of embarrassment and disturbance to the general peace. Do conflicts occur in Switzerland, in Italy, in Belgium, in Russia? If so, there is no room for assigning them to other causes. The state seeks to protect the church, and in exchange for this protection it injures the liberty of the church itself and the rights of all its citizens. Where shall we seek a more fecund source of conflicts? The ministry presided by General Jovellar, being hardly constituted, a grave event demands its attention and distracts it from more patriotic and higher objects. The representative in Madrid of a foreign sovereign has just issued a circular to religious authorities who are exercising their mission in Spain, which is contrary to the policy of the government, and in the last paragraph of which there is contained an assertion which evidently favors the cause of an insurrection which has for some time existed in our country. This is the case, such as it presents itself, stripped of its religious relations and of its connections of a distinct character. What is to be done with the nuncio of the Pope? A democratic government would have done nothing more than give him his passports as the envoy, which he is, of a foreign sovereign, and bring before the ordinary tribunals the prelates who second his attitude, if, in seconding it, they infringe the laws. But the prerogatives of Rome exist, and the author of the act in question is the nuncio of the Pope. He represents a church protected by the state. What is to be done? We comprehend that the conflict is serious, but for us there is only one possible answer—to proceed now as energy commands, as the national decorum and the prestige of the government counsel, and, by and by, when the Cortes open, to add to the constitution an article which shall make the recurrence of these conflicts impossible, by assuring alike the indisputable sovereignty of the state and the liberty of the church; that the church be set apart from the burning questions of policy, far from governments and parties, since its mission is not among them. This is the formula which most befits its interests. At the same time, against those who, under the cloak of religion, endeavor to perturb communities and disturb the good order of nations, the civil powers would find in this formula a most useful weapon. Let us remember the words of Christ: "Render unto Cæsar the things which are Cæsar's, and unto God the things which are God's." For many centuries the priesthood has asked, and even taken, as though it were God's, somewhat more than belonged to His priests. It is time now that Cæsar claimed his share.

No. 544.

*Mr. Mantilla to Mr. Fish.*

[Translation.]

LEGATION OF SPAIN AT WASHINGTON,  
 Washington, January 1, 1875. (Received January 2.)

The undersigned, envoy extraordinary and minister plenipotentiary of Spain, has received orders from the new government established in that country to inform the Government of the United States that Prince Don Alfonso de Borbon y Borbon has been proclaimed King of Spain, with the title of Alfonso XII, by the most powerful elements of the country, with the general assent of the armies of the peninsula and of the colonies, and with the adhesion of the towns.

On the peaceful accomplishment of this highly important change, which opposes a popular and constitutional monarchy to the absolute monarchy, by divine right, which the fanatical Carlists have, for half a century, been endeavoring to raise upon the ruins of civilization, of liberty, and of progress, unsuccessfully, it is true, but with a perseverance and an earnestness worthy of a better cause, a ministerial regency has been established, in accordance with the provisions of the Spanish constitution, as follows:

President, Cánovas del Castillo.  
 Minister of state, Don Alejandro de Castro, and the Marquis de Molins *ad interim*.  
 Minister of grace and justice, Don Francisco de Cárdenas.  
 Minister of war, Don Joaquin de Jovellar.  
 Minister of finance, D. Pedro de Salaverria.  
 Minister of marine, the Marquis de Molins.  
 Minister of government, D. Francisco Romero Robledo.  
 Minister of fomento, (encouragement of commerce, agriculture, &c.,) the Marquis de Orovio.  
 Minister of the colonies, D. Adelardo Lopez de Ayala.

This movement having been seconded by the army of the north, the general-in-chief of the latter has addressed to the new government the telegraphic dispatch of which I have the honor to inclose a copy to your excellency, and the acting minister of state informs me that the event of which I have the honor to inform the Government of the United States has been hailed at Madrid and in all the provinces with the same enthusiasm as it has been by the army.

The undersigned avails himself, &c.,

ANTO. MANTILLA.

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[Inclosure.—Translation.]

*The General-in-Chief of the Army of the North to the President of the Ministerial Regency.*

[Telegram.]

LOGROÑO, 31.

In the name of this army, I congratulate Your Excellency personally, and I am happy to salute you with the highest respect. As we all rally under the flag of the legitimate monarchy, represented by Don Alfonso XII, permit me to give expression to the fervent desire of the Army of the North, that that flag may henceforth be, not the ensign of a party, but the emblem of the regeneration of our country, and the *labarum* of all Spaniards who love order and liberty alike.

## CORRESPONDENCE RELATING TO THE STEAMER VIRGINIUS.\*

No. 545.

*Rear-Admiral Scott to Captain Whiting.*UNITED STATES FLAG-SHIP WORCESTER,  
*Key West, December 14, 1873.*

SIR: In accordance with the Navy Department's instructions, copies of which are herewith inclosed for your guidance, you will proceed with the United States steamship Despatch to Bahia Houda, Cuba, on the night of the 14th instant, and there receive the steamer "Virginius," as directed.

You will take from the Pawnee a crew for the Virginius, and on receiving her place Lieut. A. Marix in command, and order him to take her to Tortugas, accompanying her with the Despatch, and giving such assistance as may be necessary.

On arriving at Tortugas, you will place Lieut.-Com. D. C. Woodrow, of the Ossipee, in command of the Virginius, and such other officers as you may deem necessary to take her to New York, using every exertion to put her in proper condition for the voyage. Direct the officer in command to proceed direct, and in no event to touch at any port on the way, unless compelled by extreme necessity. You are authorized to take from the Ossipee any articles of stores or provisions that you may deem necessary for the Virginius, and when she is ready for sea order Commander Walters, commanding the Ossipee, to convoy her to New York with all dispatch, and there report, as directed by the Department's instructions.

The Department desires to be informed as soon as the Virginius is in our possessions. You will, therefore, advise me of the fact as early as possible.

To your good judgment and energy are intrusted all details in carrying out promptly the Department's instructions.

Wishing you a pleasant trip,

Respectfully,

G. H. SCOTT,  
*Rear-Admiral, Commanding  
United States Naval Force, North Atlantic Station.*

Capt. W. D. WHITING, U. S. N.,  
*Commanding United States Flag-Ship Worcester,  
and Chief of Staff, Key West.*

No. 546.

*Captain Whiting to Rear-Admiral Scott.*UNITED STATES STEAMER DESPATCH,  
(AT SEA NEAR TORTUGAS, FLA.,)  
*December 17, 1873.*

SIR: I take pleasure in informing you of my arrival at this anchorage, accompanied by the steamer Virginius, which I am now preparing for

\*Continued from Foreign Relations, 1874, p. 1117.

sea with all dispatch. Leaving Key West at 10 p. m. of the 14th instant, we arrived off the harbor of Bahía Honda, Cuba, at 1 p. m. of the 15th instant. No pilot appearing, the vessel was run in by Lieutenant-Commander Rodgers to a safe anchorage near the *Virginius*, lying off Fort Difuntos, midway in the bay. Two miles farther in, at the southern end of the bay, lay a Spanish gunboat, from which a boat put off and boarded the *Virginius*, till then without colors, and at — p. m. the United States ensign was hoisted at her peak. Shortly after Commander Cámara paid a visit of ceremony to this vessel, informing me that he had instructions to turn over to the accredited official of our Government the *Virginius*, then in his charge, asking me at what hour it would be convenient on the 16th to turn her over. Assured by me that a time most convenient to him would be agreeable to me, the hour of 9 a. m. was fixed, at which time, with the American flag flying at the flag-staff, Commander Manuel de la Cámara, of the Spanish navy, turned over the *Virginius* to the authorities of the United States, receiving my receipt for her.

I found her to have about fifty tons of soft coal on board, and immediately transferred the officers and crew brought over for her.

After examination of the engine and boilers, the fires were started. Provisions and the necessary stores were rapidly placed on board. At 1 p. m. both vessels hove up their anchors and started, but the *Virginius* was obliged to anchor again, before getting out of the harbor, on account of a derangement of her engines. Ascertaining that she could not be put in running order for several hours, she was taken in tow by this vessel, and at 3 p. m. left the bay of Bahía Honda.

I close this dispatch to send it by the *Fortune*; deeming it best, as we need no assistance, to communicate with you at once.

The *Virginius* has steam up now, and we will drop the tow.

I desire to state that, in carrying out my orders, I met with extreme courtesy from Commander Cámara, who tendered any assistance in his power.

Respectfully,

WM. D. WHITING,  
*Captain and Chief of Staff.*

Rear-Admiral G. H. SCOTT,  
*Commanding North Atlantic Station.*

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No. 547.

*Lieutenant-Commander Woodrow to Mr. Robeson.*

UNITED STATES STEAMER OSSIPEE, (3d rate),  
OFF THE BATTERY, NEW YORK,  
December 30, 1873.

SIR: I have the honor to report that in obedience to an order from Admiral G. H. Scott, a copy of which is herewith inclosed, I took command of the steamer *Virginius* on the evening of December 17, off Dry Tortugas, relieving Lieutenant Marix.

Ensign George A. Calhoun and Second Assistant Engineer N. H. Lamden, together with three machinists, two boiler-makers, six seamen, E. F., six ordinary seamen, E. F., eight seamen, and fourteen landsmen composed her complement. Second Assistant Engineer Absalom Kirby and Midshipmen Underwood and Tyler subsequently joined the vessel.

I found her in a very filthy condition, with over twenty tons of ashes

and dirt in her fire-rooms, and her crew exhausted by constant work since leaving Bahia Honda.

She was leaking under some cement in her fore-foot, and had water in all her compartments. She had about seventy tons of bituminous coal on board, but no other stores. During the night I received stores from the Ossipee in the different departments, and a working-party of fifty men, who coaled ship from the schooner *Mattie A. Hand*.

Next morning, finding that the water had gained two feet in the fire-rooms, I stopped coaling and used all hands pumping and bailing out the ship. At 8 a. m. the water was up to the grate-bars, with four feet of water in forward compartment and two feet six inches in after one.

During the day I received assistance from the Ossipee in the way of working-parties, to help clear ship of water, repack stuffing-boxes, and overhaul pipes and strainers about engines, and to repair the bunks in fore-castle and cabins. Capt. William D. Whiting was on board during the day, and examined the leak in her forward compartment, with Chief Engineer King and myself.

This was the only leak of any consequence that we could find in the ship. At 4 p. m. the water was so much reduced that I was able to start fires in forward boiler, and at 8.15 p. m. in after boiler.

We were then riding by a hawser from the Ossipee, and as soon as steam was reported I backed the engines, and gained so much on the water with the main bilge-pumps that Captain Whiting expressed himself as satisfied that the *Virginus* was in a fit condition to go north, and left the ship. Shortly after we went to sea in tow of the Ossipee. During that day, and as long as the sea was comparatively smooth, I kept the water down with the main engine-pumps. As we proceeded north, and the sea became rougher, the rivets in one of her bow-plates became loose, as did also an old patch on the next plate abaft, and she leaked so badly that I had to plug up the limber-holes in her forward bulk-head to keep fire-rooms clear.

During the forenoon of the 22d instant I threw overboard her port bower anchor and over twenty tons of old iron, wire rigging, &c., from her fore hold, and shifted the coal aft.

On the afternoon of the 23d instant I had from eight to ten feet of water in the forward compartment, and so much water in the fire-rooms as to endanger putting out the fires, and I signaled to the Ossipee not to go farther north, that there was a dock at Charleston.

She answered, "We are bound for Charleston," and changed her course to the southward. The increased speed enabled me to reduce the water in her fire-rooms, but I felt no confidence in being able to keep it in check, as the pumps were constantly breaking down and getting choked up, requiring sometimes an hour or more to repair them.

The pressure of water on the forward bulk-head was so great that it bulged out about six inches.

Besides this, my men were worn out, and had no place to sleep, as their bunks and bedding were drenched. The bows were working so much that the bunks in the fore-castle came adrift from the ship's side.

At 3 a. m., 24th instant, the crown-sheet of middle furnace after boiler gave out, and I had to haul fires from that boiler. Shortly after several blisters were reported in forward furnace, and at daylight I signaled condition of boilers and state of water to the Ossipee.

Chief Engineer King then came on board and examined the boilers, and when he returned to his ship we proceeded on up the coast, keeping in smoother water. That afternoon two furnaces in forward boiler gave out, although the steam-pressure was less than five pounds.

On Christmas morning the sea and wind increased, and the Ossipee ran in under the lee of Cape Fear and anchored, and as the water commenced to gain in fire-rooms I backed the Virginus's engines, but owing to want of steam I could not turn the engines over fast enough to do much good, and the water gained slowly until 5 a. m. on the 26th instant, when the fires went out and the donkey-pump stopped. The hand-pump was broken and could not be repaired with any means at my command.

I signaled to the Ossipee to haul us up and take us off immediately, as the fore compartment was full of water up to a foot of the spar-deck. There were six feet of water in fore hold, and it had risen about six inches above the grate-bars in forward fire-room. The after compartment was dry, owing to the ship being so much down by the head.

When the Ossipee's boat came under my bows the sea was very rough and it was blowing a gale of wind in squalls from the northward and eastward.

I succeeded with great difficulty in getting the men and officers transferred to the Ossipee, and deemed it inexpedient to attempt to save the bags and hammocks, on account of the great danger.

At 4.17 p. m., 26th instant, the Virginus sank in 8 fathoms water, her fore cross-trees above water. A pork-barrel buoys the end of her hawser and marks her position, in latitude  $33^{\circ} 44' 10''$  N., longitude  $77^{\circ} 59' W.$ , Smithville light bearing N.  $\frac{3}{4}$  W., (p. c.) and end of island N. N. E., (p. c.)

Inclosed herewith please find Second Assistant Engineer Kirby's report on the condition of boilers and engines. I also have the honor of forwarding the log of the steamer Virginus from December 16 to December 26, inclusive.

Very respectfully, your obedient servant,

DAVID C. WOODROW,  
*Lieutenant Commanding, U. S. N.*

HON. GEO. M. ROBESON,  
*Secretary of the Navy.*

Respectfully forwarded.

JOHN WATTERS, *Commander.*

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No. 548.

*Mr. Robeson to Rear-Admiral Davis.*

NAVY DEPARTMENT, *January 3, 1874.*

SIR: I transmit herewith a precept addressed to you, as president of a naval court of inquiry, ordered to convene at the Navy Department on the 7th instant, for the purpose of inquiring into the causes of the foundering of the steamship Virginus, recently delivered to the United States by order of the government of Spain.

Respectfully, &c.,

GEO. M. ROBESON,  
*Secretary of the Navy.*

Rear-Admiral CHARLES H. DAVIS, U. S. N.,  
*Washington, D. C.*



No. 549.

*Mr. Robeson to Rear-Admiral Davis.*

To Rear-Admiral CHARLES H. DAVIS, U. S. N.,  
*Washington, D. C. :*

By virtue of the authority contained in the "act for the better government of the Navy of the United States," approved July 17, 1862, I hereby appoint Rear-Admiral Charles H. Davis, president, Rear-Admiral John L. Worden and Commodore John C. Howell members, and Capt. Stephen B. Luce judge-advocate of a court of inquiry, which is ordered to convene at the Navy Department on Wednesday, the 7th day of January, A. D. 1874, for the purpose of inquiring into the causes and particulars of the foundering, on or about the 26th day of December, in the year 1873, off Cape Fear, of the steamship *Virginius*, recently delivered by the Spanish authorities at Bahia Honda, Cuba, into the possession of the United States.

The court will inquire—

1st. Into the exact condition of the *Virginius* in every department when she was delivered to the United States officers at Bahia Honda on the 16th December, 1873.

2d. As to what was necessary to be done to her to prepare her to go to the Tortugas.

3d. As to what actually was done to her before she left Bahia Honda.

4th. As to her condition during the passage to the Tortugas.

5th. As to her condition when she arrived at the Tortugas.

6th. As to the nature and extent of the examination that was made of her condition after her arrival at Tortugas.

7th. As to what was necessary to be done to her to prepare her to go to New York.

8th. As to what actually was done to her at the Tortugas to prepare her for her passage to New York.

9th. As to her condition when she left the Tortugas, and afterward, daily, during her passage toward New York, until she finally sunk.

10th. As to the immediate and remote causes of the sinking of the said vessel.

And, finally, they will report fully to the Navy Department upon all the above points, in order that all the facts in connection with the sinking of the *Virginius* may be clearly established, and they will also recommend any further proceedings which they may deem necessary in the case.

Given under my hand, at the Navy Department of the United States, this 3d day of January, in the year 1874.

GEO. M. ROBESON,  
*Secretary of the Navy.*

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No. 550.

*Report of the naval court of inquiry.*

NAVY DEPARTMENT,  
*Washington, D. C., January 16, 1874.*

The court of inquiry ordered to convene at the Navy Department on Wednesday, the 7th day of January, A. D. 1874, for the purpose of in-

quiring into the causes and particulars of the foundering, on or about the 26th day of December, in the year 1873, off Cape Fear, of the steamer *Virginus*, recently delivered by the Spanish authorities at Bahia Honda, Cuba, into the possession of the United States, has the honor to submit the following report :

In order to conform to the injunctions and to follow the distinctions of the precept, this report is distributed under four heads, viz :

First. Replies to the separate inquiries contained in the precept, numbered from one to eight.

Second. The condition of the *Virginus* at the time of her leaving the Tortugas, and her daily condition subsequently up to the time of her sinking.

Third. The immediate and remote causes of the sinking of the *Virginus*.

Fourth. The final report upon the above points, and upon the question of further proceedings.

The burden of evidence goes to show that "the exact condition of the *Virginus*, in every department, when she was delivered to the United States officers at Bahia Honda, Cuba, on the 16th December, 1873," was as follows :

In the engineer's department the engines were in working-order, but in indifferent condition. They needed cleaning, overhauling, repacking, &c. The auxiliary pump was out of order, and needed repairs. The furnaces were wooded and coaled, ready for firing, and the boilers were run up, preventing their thorough examination. Several tubes were plugged up in each tube-box ; the boilers were ten years old, and bore the appearance of having been much neglected ; the hand-pumps needed overhauling. In the hull a leak was discovered in the eyes of the ship, which had at one time been stopped by cement. This cement, by the working of the vessel, had become partially detached from the hull, and gave admission to a small stream of water. There was water in the after compartment, fire-room, bilges, and forward compartment—about 2½ feet in the latter : and in the fire-room the water was above the floor-plates. The *Virginus* had not been pumped out for the previous twenty-four hours. Some sixty tons of bituminous coal had been dumped into the hold, and there was also a quantity of old iron and wire rigging in the fore hold.

In the fire-room was a quantity of ashes, cinders, and *débris*, estimated at fifteen tons. The condition of the *Virginus* was filthy in the extreme. All the furniture, except a few chairs, had been removed ; no stores save the coal referred to were on board. Of the two compasses, one was in fair condition ; the chain steering-gear was old and worn, and the wheel needed repairs. There was one sail, a jib, on board.

Second. "As to what was necessary to be done to her to prepare her to go to the Tortugas."

It was necessary to provision her, make a few minor adjustments of the machinery, to fill the boilers, overhaul the steering-gear, repair the wheel, examine the compasses, bend the only sail on board, clear the fire-room of ashes, &c., pump the ship out, put in order the auxiliary and donkey pumps, and examine the vessel for leaks.

Third. "As to what actually was done to her before she left Bahia Honda."

All the above was actually done, except putting in order the pumps. The auxiliary pump was repaired during the passage to the Tortugas.

Fourth. "As to her condition during the passage to the Tortugas."

Her condition was fair. In attempting to steam out of the harbor,

the condenser became heated and the engines were stopped. The Despatch then took her in tow. (The *Virginus* got under way at 1.30 p. m., December 16, 1873.) The hand-pumps were kept constantly at work. At 1.30 a. m. of the 17th December the *Virginus's* engines were got into working-order and were started. At 7.45 the tow-lines from the Despatch parted, and the *Virginus* proceeded under steam, without being further towed, to the Tortugas. The engines worked well after they were started at 1.30 a. m., and the steam-pumps kept the leak under. The weather was fine, the sea smooth.

Pressure of steam carried, from twenty to twenty-two pounds.

At 1.50 p. m., December 17, the *Virginus* anchored at the Tortugas.

Fifth. "As to her condition when she arrived at the Tortugas."

She was in the same condition as when she left Bahia Honda, except that the auxiliary pump had been repaired, and that some minor repairs had been made to the engines on the passage.

Sixth. "As to the nature and extent of the examination that was made of her condition after her arrival at Tortugas."

On December 18, 1873, Capt. W. D. Whiting, Lieut. Com. D. C. Woodrow, and Chief Engineer W. H. King made an examination of the hull and engines of the *Virginus*. A small leak was discovered in the bows, on the inside and near the stem, which appeared to have been at one time stopped by filling in with cement. At the time of the examination the cement was partially detached from the shell of the vessel, and water was welling in over and under the cement.

In the forward compartment the hull was much rusted, the iron plates thin, and covered with heavy rust scales; there was a plate in the port bow, about ten feet abaft the stem, which had a patch on it. There was no evidence of leak in the starboard bow. The engines were also examined and found to be in fair working condition. The donkey-pump was found much out of order, and the stuffing-boxes needed repacking.

The boilers were run up and could not be thoroughly examined. The passage from Bahia Honda had developed no leaks nor any especial weakness, as twenty-two pounds of steam had been carried.

So far as was practicable, the whole vessel had been searched for leaks, but none other than the one in the bow had been discovered.

Seventh. "As to what was necessary to be done to her to prepare her to go to New York."

With the evidence of her successful passage from Bahia Honda to the Tortugas, and considering the apparent unimportance of the leak in the bow, which the steam-pumps had easily kept under, all that appeared necessary to be done to the *Virginus* was to prepare her for sea by packing stuffing-boxes, reeving new wheel-chains, furnishing her with the necessary stores and provisions, repairing and fitting her boats, and repairing the donkey-engine. This statement is based upon the evidence before the court.

Eighth. "As to what actually was done to her at the Tortugas to prepare her for her passage to New York."

Everything noted in the answer to the seventh in interrogatory, with the exception of repairing the donkey-pump.

Ninth. "As to her condition when she left the Tortugas, and afterward, daily, during her passage toward New York, until she finally sank."

In the opinions of the officers who have appeared before the court, as expressed in their evidence, the *Virginus*, when she left the Tortugas, was in a sufficiently seaworthy condition to make the passage to New

York, provided no very bad weather supervened. The daily condition of the *Virginus*, as shown by the evidence, was as follows:

The *Virginus* steamed from the Tortugas in tow of the *Ossipee* on the 19th day of December, 1873; the weather was fine, and the engines turned over slowly, to avoid running upon the *Ossipee*. The steam-pumps kept the leak under. The leak in the bow did not apparently increase, although it was observed that the vessel worked forward.

*December 20, 1873.*—Weather fine; sea smooth; wind from the northward; the leak was kept under by the steam-pumps; *Virginus* stopped twice to repair eccentrics; average pressure of steam, 8 pounds.

*December 21, 1873.*—Weather fine; wind from north and east, and wind and sea moderate; *Virginus* leaking forward more than at any previous time; water gained in forward compartment; the holes in water-tight bulk-head of forward compartment were plugged up; strainers on bilge-pumps became choked; water gained in fire-room; got the donkey-pump in working-order, and the water was cleared from the fire-room; the plugs were removed from the forward bulk-head to allow the water to run aft to the pumps; during the night the wind and sea increased.

*December 22, 1873.*—Weather cold and rainy; wind fresh from north and east; sea rough; ship rolled and pitched moderately. The working of the ship's bows was quite apparent; the engines were turned over slowly, to avoid fouling the *Ossipee*.

The *Virginus* leaked freely, and the forward compartment gradually filling. The steam and hand pumps were worked constantly. During the night it blew heavily, in squalls. Water in forward compartment,  $4\frac{1}{2}$  feet. Average steam-pressure, 14 pounds.

*December 23, 1873.*—Weather cloudy and rainy; a moderate gale from the north and east was blowing; the sea was rough. During the morning the water gained fast; six feet in the forward compartment, and nearly up to grate bars in the fire-room. Steam and hand pumps were constantly worked. At 8 a. m. signal was made to the *Ossipee*, "Making water badly; go ahead faster, so that we can work our pumps," (move quickly.) Shortly after, *Ossipee* was signaled, "Stand in toward land." At 9.30 a. m. *Ossipee* changed course to northwest by west and made sail. The port anchor, wire rigging, and old iron in the fore hold were thrown overboard to lighten the vessel forward; coal was shifted from fore to aft hold; a sea-anchor was rigged, under the lee of which the boats might ride in case of necessity; the boats were also provisioned and watered. At 5.30 p. m. one fire, under forward boiler, was extinguished by water; *Ossipee* was signaled, "Will wave red lantern to-night, in case we need assistance;" also, "Water rising in fore hold; can go no farther north. Dock in Charleston." *Ossipee* replied, "Is water rising in fire-room?" Was answered, "Yes, six inches." *Ossipee* signaled, "Can you hold on until daylight?" Was answered, "Yes, if forward bulk-head holds out." *Ossipee* signaled, "We are bound for Charleston." During the night the wind moderated, and the pumps gained on the leak, in consequence of the increased speed of the engines and the quicker working of the pumps, the *Ossipee* being under steam and sail standing toward the land, and going faster than she had previously been going. During the night 8 feet of water in forward compartment; *Virginus* pitched heavily and steered badly.

*December 24, 1873.*—Weather cold and thick; wind from north and east, moderate, with moderate sea. At 3 a. m. crown-sheet of after boiler gave way, and fire was hauled from under the boiler; the fact was signaled to the *Ossipee*. At 7.20 Chief-Engineer King, of the *Ossipee*,

went on board the *Virginus* to inspect the boilers; he left at 8.20, and 8.25 the *Ossipee* signaled, "We will continue up the coast." At this time the *Virginus* was about forty-three miles from Charleston. The steam and hand pumps were constantly worked; officers and men were nearly exhausted. During the afternoon blisters were discovered on the forward boiler; hauled fires in one furnace, and reduced steam to 2½ pounds. During the night the wind and sea increased, and the leak gained.

*December 25, 1873.*—Weather cold and rainy; wind from north and east, blowing a moderate gale; sea rough. At 6.15 a. m. the towing-hawser parted, and the *Virginus* steamed toward the land, the *Ossipee* leading. At 8 a. m. a cast of the lead was got in eight fathoms; land was sighted, bearing north by east, distant about fifteen miles. At 8.30 the *Ossipee* anchored, and sent end of hawser to the *Virginus*. The *Virginus* commenced to back her engines in order to work the steam-pumps. The leak gained fast during the day. The water was 9 feet in the forward compartment, 2 feet in the fore hold, and 8 inches in forward fire-room. Signal was made to *Ossipee*, "Haul us up and take us off; can do nothing more." At 5 p. m. the crew of the *Virginus* went aft, and asked that the ship might be abandoned, as they were entirely exhausted, having been wet through for several days, and having had no place to sleep in.

During the afternoon the donkey-pump gave out. At 6 p. m. it was repaired and working, but very indifferently. Stopped backing the engines, as, from the low pressure of steam and the increase in the leak, they were of little or no service; they could not be backed rapidly enough.

At 7 p. m. *Virginus* signaled, "Can hold out until morning." During the night the wind and sea increased, and the water gained steadily; 5 feet in fore hold and nearly up to the grate-bars in forward fire-room. The *Virginus* was slowly sinking by the head.

*December 26, 1873.*—Weather cloudy, with rain. A gale was blowing and heavy sea running. At 3 a. m. signal was made to *Ossipee*, "Water gaining fast; fires nearly out; haul us up." The bows of the *Virginus* worked so badly that the bunks in the top-gallant fore-castle fell down. At 5 a. m. the water rose above the grate-bars and fires were extinguished. Signal was made to the *Ossipee*, "Haul us up and take us off." At 6 a. m. the wind moderated; the crew had been employed bailing with buckets, but at this time ceased, as further efforts were useless.

The *Ossipee* hauled the *Virginus* to within fifty fathoms, and dropped a cutter down to her to receive her crew. By — a. m. the *Virginus* was abandoned, the officers and crew losing nearly all their personal effects, but saving the chronometer and nautical instruments.

At the time of abandoning the *Virginus* the forward compartment contained 10 feet of water, the fore hold 5 feet, and the water was five inches above the grate-bars in the fire-room.

At 4.17 p. m. the *Virginus* sank, bows first, in eight fathoms of water. Tenth. "As to the immediate and remote causes of the sinking of the said vessel."

The immediate causes of the sinking of the *Virginus* were stress of weather, the increased leaks caused thereby, the giving out of the boilers, and the inability to work the pumps effectively, in consequence of the failure of the steam-power.

The remote causes were the weakness of the hull, resulting from age and neglect, and the deterioration of the boilers from the same causes, which deterioration was not fully appreciable when the examination was made of them at the Tortugas.

No. 551.

*Final report of the naval court of inquiry.*

## FINAL REPORT.

Finally, the court has the honor to report that the preceding statements comprise all the circumstances and points enumerated in the precept in a manner so full, plain, and comprehensive that all the material facts connected with the sinking of the *Virginus* are thereby clearly established.

Beyond these material facts it is made apparent by the testimony of the superior officers, including the chief engineer, that zeal in the performance of duty led them to rely too confidently upon the permanence of the existing condition of the hull and the actual working of the machinery exhibited in the passage from Bahía Honda to the Tortugas, and during the first three days out from that port.

The court, however, satisfied that their conduct was becoming and praiseworthy throughout, does not deem any further proceedings in the case necessary.

C. H. DAVIS,  
*Rear-Admiral and President of the Court.*  
S. B. LUCE,  
*Captain United States Navy, Judge-Advocate.*

No. 552.

*Mr. Fish to Admiral Polo de Bernabé.*

DEPARTMENT OF STATE,  
*Washington, March 28, 1874.*

SIR: I have the honor to transmit herewith for your consideration a copy of the report\* of a naval court of inquiry convened under the direction of the President, by an order of the Secretary of the Navy, promulgated on the 3d of January last, to inquire into the causes of the foundering of the steamer *Virginus*, then recently delivered to the United States by order of the government of Spain.

The report contains all the evidence, documentary and oral, submitted to the court of inquiry in relation to the subject of the inquiry on that occasion.

Accept, sir, &c.,

HAMILTON FISH.

No. 553.

*Admiral Polo de Bernabé to Mr. Fish.*

[Translation.]

LEGATION OF SPAIN AT WASHINGTON,  
*December 30, 1873. (Received December 30.)*

In obedience to instructions received from his government, the undersigned, envoy extraordinary and minister plenipotentiary of Spain, has the honor to ask the attention of the honorable Secretary of State of the United States to the matter of entering upon the consideration of the damages and injuries caused to Spain by the acts of the *Virginus*,

\*See Nos. 550, 551.

which vessel was fitted out in the port of New York, in the year 1870, for the purpose of forming part of an expedition organized in the United States against the Spanish government and its subjects in the island of Cuba. It could not have been otherwise than granted, in the opinion of the undersigned, that the expedition or voyage undertaken by this vessel, in October of that year, was not of a purely commercial nature, as this is understood in international jurisprudence, and by the municipal laws of the United States, but that in view of the articles which she carried, her character was an essentially military one.

If credit is to be given to the testimony of her captain, Shepperd, and to the chief of staff, Varona, who was on board, with the so-called General Quesada, as, in view of its importance, must be done until it shall have been refuted or destroyed, the *Virginus* left the jurisdiction of the United States for the purpose of engaging in piratical acts, which purpose it soon undertook to carry out on the high seas.

From the sworn statement of Shepperd, which was transmitted to the Department of State with a note from this legation, bearing date of the 10th instant, it appears that proposals of a piratical character were made to him in New York at the house of one José Maria Mora, and both Shepperd and Varona testify that the attempt was made to act on the high seas in accordance with said proposals, and that this attempt was only given up when it was discovered that the vessel which they were about to capture carried the English instead of the Spanish flag.

It is hereby clearly shown that there was a purpose, *to which a beginning of execution was given*, to commit depredations on the high seas upon Spanish property with a vessel which did not legally carry the flag of any nation, which, according to the laws of nations, constitutes the *crime of piracy*.

It is known, moreover, that those who fit out illicit expeditions like that of the *Virginus* seek to invest them with the character of legitimate commercial transactions, in order thus to conceal the criminality of their designs. This occurred in the case of the *Virginus*; only in this instance the deception has become patent.

From the first moment everything connected with the said vessel was a pure fraud. The purchase was made of the Government of the United States with a criminal intent. The money which was paid for it was acquired in the *United States* by the enemies of Spain in contravention of the laws of what would be required by the friendly relations existing between the two nations. The certificate of her registry was obtained at the New York custom-house through perjury on the one hand and an abuse of confidence on the other from the customs officials.

Her papers and crew-list were false, inasmuch as they concealed the real destination of the vessel, giving a false one in its place. Her clearance was not valid for many reasons, among others because her manifest did not contain a true statement of the whole cargo placed on board by Quesada. The voyage on which she sailed at the time referred to was conceived and executed in all its details by fraudulent designs and practices.

It is not under such circumstances that the operations of legitimate commerce are undertaken and carried out, nor is it possible to allow the transportation of munitions of war to open ports, under cover of such a disguise, in the possible interest of an insurrection existing in any section of the country to which such ports belong. This is a practice which, in the light of certain doctrines, whose inconsistencies are, perhaps, not observed, the most that they do is to grant it a negative tolerance, but they by no means encourage it.

It is true that the *Virginus* did not carry a large cargo of arms when she left New York, but she sailed with the intention of receiving on the high seas, near Curaçoa, according to agreement, a considerable cargo of munitions of war, which was conveyed to her by the schooner *Billy Butts*, which likewise left the port of New York for the purpose mentioned. If it was thought that this operation was one of legitimate commerce, why was not this cargo taken in in the port of New York?

When the *Virginus* left the port of New York it is possible that she had not, at that moment, a sufficient number of recruits on board in order to constitute her a war-transport, but she carried the superior officers, the principal persons who, both in the United States and in Cuba, busy themselves in promoting the insurrection.

Of much more importance were those persons, in view of the aid that they were able to lend to the insurrection and to its acts against the legitimate government of Cuba, than were Messrs. Mason and Slidell in reference to the United States and the Confederate States when they were taken by an American cruiser from on board the *Trent*.

The first expedition of the *Virginus*, in conjunction with the *Billy Butts*, under command of the so-called General Quesada, was of a military character, as is shown by the testimony which the undersigned has already had occasion to send to the honorable Secretary of State, to say nothing of other circumstances which likewise prove it, and it is undeniable that it had its commencement and origin in the United States.

Of the same nature was the last attempt, in which the said vessel was taken by the *Tornado*, inasmuch as her principal officers, such as Ryan, del Sol, and others, were in the pay and employ of the Cuban insurrection, and they, in their turn, paid and employed other persons within the jurisdiction of the United States to take part in a military expedition which was to sail from New York and other points of the United States, they going on board of the *Virginus* by the steamer *Atlas*, and by other means, in order finally to go to Cuba.

The circumstance that since October, 1870, the *Virginus* has touched at foreign ports, without having returned to any port of the United States, cannot, if this is so, exonerate the vessel from her criminality nor the United States from the responsibility which they have incurred by reason of the protection so effectually given by their consuls and vessels of war.

Thanks to this protection, there was formed outside of the material territory of the United States, but within their legal jurisdiction, a kind of base whence the *Virginus* has been able to carry on hostile operations against Spain, and to land expeditions of considerable magnitude in the Island of Cuba.

With respect to all these matters, the undersigned cannot but confidently expect the admission on the part of the Secretary of State that the obligations of one power toward another friendly power, in whose territory there exists an insurrection to which neither party has granted belligerent rights in an international sense, are not less than those of a neutral during a regular state of war between two other countries with which the neutral is on terms of peace and friendship. The duty of efficaciously arresting beginnings, as well as of preventing military expeditions from being conveyed from one country to another, in which, unfortunately, an insurrection exists, is equally obligatory in both cases, and in order to fix the measure of the efficacy referred to, the undersigned is willing, in the case of the *Virginus*, to abide by the proofs furnished and the stand taken at Geneva, in the name of the United



States, whereby was shown the responsibility incurred by Great Britain toward the United States.

Finally, in view of the considerations which have been only generally set forth, the undersigned feels confident that the Government of the United States, acting in obedience to the sentiments of justice and equity which it so ably invoked in its own case, will not hesitate to signify to Spain its willingness to attend to such reclamations as she may have to present for injuries done, with proof that such injuries have been done by the acts of the *Virginus*.

The undersigned avails himself of this occasion to reiterate to the honorable Secretary of State the assurances of his most distinguished consideration.

JOSÉ POLO DE BERNABÉ.

The Hon. SECRETARY OF STATE  
of the *United States*.

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No. 554.

*Mr. Fish to Admiral Polo de Bernabé.*

DEPARTMENT OF STATE,  
*Washington, January 9, 1874.*

The undersigned, Secretary of State, has the honor to acknowledge the reception of the note of his excellency the envoy extraordinary and minister plenipotentiary of Spain of the 30th ultimo, asking consideration of alleged damages and injuries to Spain caused by the acts of the steamer *Virginus*.

On careful perusal of this note the undersigned perceives that the reclamation presented in behalf of Spain is founded on two distinct grounds: first, the assumption that the *Virginus*, at the time of her departure from New York, sailed with false papers, including registry, crew-list, and manifest; secondly, the assumption that in other respects the expedition was unlawful by reason of the imputed piratical character or purposes of the voyage.

As to the first ground of reclamation, it might be sufficient to say that at the time of the departure of the *Virginus* from New York no objection to the validity of her papers was made from any quarter either to the Government here or to the officers of the customs in New York; nor had anything taken place to awaken suspicion in that respect. All the evidence on that subject referred to by his excellency the envoy of Spain is of recent date, and the facts have come to light only in consequence of the capture of the *Virginus* by the *Tornado*, and of subsequent incidents occurring at Santiago de Cuba.

But if it had been otherwise, the falsification of the papers of the *Virginus* would have been a mere municipal offense on the part of the persons implicated, subject as such to punishment by the local law of the United States, and, whether so punished or not, involving no possible question or matter of controversy with any foreign government. And, therefore, if, as his excellency the Spanish minister insists, the falsification of the register of the *Virginus* were one of the incidents of an intended voyage illegal in other respects, yet this particular fact could not be entitled to any consideration in an international point of view; nor could it constitute reason of complaint on the part of any foreign government.

Finally as relates to this cause of reclamation, if, which cannot be admitted, it were possessed of any force in other relations, still it would be an all-sufficient answer to say that such an act of mere municipal fraud as the falsification of the ship's register, even although a Spanish subject should have been one of the parties to the fraud, cannot involve responsibility on the part of the United States toward Spain as for want of diligence or good faith, seeing that the imputed frauds were not brought to the notice of the United States by Spain, and were otherwise unknown and unsuspected by the Government.

As to the second ground of reclamation, that is, the imputed illegal intentions or objects of the voyage of the *Virginius*, the undersigned does not discover in this any just cause of responsibility of the United States to Spain, whether the question be considered in the light of the municipal law or that of the law of nations.

It is not pretended that the *Virginius* was armed, equipped, or manned for war in any port of the United States; that she bore at the time, or subsequently received, any armament as a ship of war; that her build or equipment had any special military character; or, indeed, that she was intended to, or ever did, in fact, act as a cruiser, piratical or other, against Spain, or the subjects of Spain.

All which is alleged in this respect seems to be that she had on board some inconsiderable invoice of arms or munitions of war, and, it may be, some few persons as passengers, subjects of Spain, and implicated in the existing insurrection of Cuba, but not in sufficient number, as his excellency the minister of Spain admits, to impress upon her the character of a military-transport ship. But the destination of the ship was the neutral port of Curaçoa; the voyage was, on its face, a perfectly lawful one; and the ship seems to have pursued her clearance, and, as it is understood, to have proceeded according to her destination, without touching or attempting to touch on the island of Cuba.

There was no allegation or charge of any improper intent or purpose in the voyage on which she was about to sail, and there was nothing in the build, equipment, cargo, or destination of the vessel to excite suspicion or to authorize proceedings against her at law, or detention by the President. There is no doctrine in the law of nations more universally admitted than that a neutral or friendly government cannot be rendered responsible for shipments of arms, munitions, or material of war made by private individuals at their own risk and peril, and as a private speculation.

If a state of war exists, the parties concerned are unquestionably exposed to the confiscation of their goods as contraband of war, but in that case their act affords no ground of reclamation against their government. Such, as the undersigned undoubtedly assumes, is the received law of nations, not only in the United States, but among all the maritime states of Europe, including Spain herself. It avails nothing to suggest that, as a question of abstract or speculative right, this doctrine of the law of nations involves "inconsequences;" suffice it that such is the doctrine, as universally admitted both in Europe and America.

Hence the undersigned is constrained to deny that there is anything in these particular facts, as represented by the Spanish minister, appertaining to the cargo and voyage of the *Virginius*, to imply responsibility on the part of the United States.

These observations apply with equal or more force to the voyage of the schooner *Billy Butts*, as, indeed, is impliedly conceded by the omission to base any special claim on the voyage of that vessel.

The undersigned is unable to discern any relation between the present question and that of the Trent, it never having been pretended by the United States that the Trent was a case of unlawful equipment in a neutral port, or that her character or her voyage imparted to the United States any cause of reclamation for damages as against Great Britain, and it being admitted by Great Britain that a state of war existed when the act complained of was done.

In conclusion, the undersigned cannot concur with his excellency the envoy from Spain in perceiving any analogy whatever between the case of the *Virginus* and that of the *Alabama*, or other vessels, fitted out in the ports of Great Britain during the late civil war in the United States, and which became the subject of arbitral adjudication at Geneva under the treaty of Washington. If there had been a state of war and the *Virginus* had been armed, equipped, and manned in the port of New York as a regular ship-of-war; if she had then cruised as such on the high seas and had captured and destroyed Spanish merchantmen; then, but not otherwise, Spain might have appealed to the proceedings before the tribunal of arbitration at Geneva as an argument against the United States on the present occasion, exhibiting the question, in behalf of individual Spanish subjects, of redress for injuries suffered by them in consequence of supposed want of due diligence on the part of this Government in not preventing the departure of such ship-of-war from the ports of the United States. But there is no pretension that such is the present case. Spain, in advancing the present reclamation, does not admit that there is a state of war, and does not pretend to represent injuries of subjects of hers, preyed upon by the *Virginus* as a cruiser, but damages and injuries of Spain as a nation or government, by reason of the assumed relation of the acts of the *Virginus* to the existing insurrection in Cuba. And it is that very class of claims which, presented by the United States against Great Britain mainly in the purpose of obtaining a determination of the question, was disposed of by the arbitrators in their unanimous formal declaration that claims of this nature "do not constitute upon the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations." In appealing to the acts of that tribunal as authority Spain must be considered as accepting such authority, which is conclusive as argument in opposition to the present reclamation on the part of Spain.

With these observations the undersigned has the honor to renew to his excellency the envoy extraordinary and minister plenipotentiary of Spain the assurance of his high consideration.

HAMILTON FISH.

His Excellency Señor DON JOSÉ POLO DE BERNABÉ,  
*&c., &c., &c.*

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No. 555.

*Admiral Polo de Bernabé to Mr. Fish.*

[Translation.]

LEGATION OF SPAIN,  
*Washington, February 2, 1874. (Received February 2.)*

The undersigned, envoy extraordinary and minister plenipotentiary of Spain, has had the honor to receive the note which the honorable

Secretary of State was pleased to address to him under date the 9th ultimo, in reply to that of this legation of the 30th of December, 1873, relative to the damages and losses occasioned to Spain by the acts of the steamer *Virginus*, with reference to which the undersigned regards it as his duty again to call the attention of the Secretary of State to the text of his communication of the 30th of December, 1873, referred to with a view to observe that the claim which is therein made is based upon the following consideration, namely, that the *Virginus* was fitted out at the port of New York during the year 1870 to form part of a military expedition organized in the United States against the Spanish government and its subjects in the island of Cuba, from which time she was efficaciously protected by the consuls and men-of-war of the United States; thanks to which protection she succeeded in forming for herself outside of the material territory of the United States, but within their legal jurisdiction, a sort of base, whence the *Virginus* was enabled to commit hostilities against Spain and land important expeditions in the island of Cuba. The falsity of the register of the ship's roll, of the list of passengers, of the manifest, and of the clearance, were insisted upon as showing that the expedition was of a military and not of a commercial character; and, therefore, that every reasonable pretext of a legal enterprise vanished in advance, or that the taking on of arms, munitions, and other war-materials, so far as it was done on the account and at the risk of individuals, might be looked at in the same light.

Operations of this sort are scarcely tolerated by international law, and the eminent defender of the interests of the United States at Geneva established in respect to them that, pursuant to modern opinion on similar subjects, acts such as those just set forth are contrary to wise principles of neutrality.

A breach of international law to the injury of Spain and her subjects being thus alleged and proved, the former has a just cause for complaint against and reparation from the United States, unless the latter can exonerate themselves from all responsibility by showing that they were in no way at fault in the matter.

The considerations set forth by the honorable Secretary of State for the exemption of the United States seem to the undersigned to be insufficient, if either the facts or the precepts of law be regarded. The undersigned does not acknowledge that at the time when the *Virginus* started from New York nothing had happened which could give occasion for suspicion's in regard to the validity of her papers. Certainly the circumstance that, before the issuing of the register, the omission to give the security usual in such a case for a document which for so many months served as a protection to the *Virginus* against the Spanish cruisers, must have been an occasion for the collector of customs at New York, and all his subordinates whose obligation it was to prevent the departure of vessels which had no regular clearance, to entertain at least suspicions that the voyage on which she was about to proceed was illicit, even if it should be denied, apparently with reason, that any of those functionaries knowingly lent themselves to such an irregular clearance.

Nor can the assertion be allowed to pass that all the testimony relative to the falsity of the documents adverted to is of recent origin and was only brought to light in consequence of the capture of the *Virginus* by the *Tornado*, and of the subsequent incidents at Santiago de Cuba.

More than eight months ago this legation invited the attention of the

Department of State to the deposition of Captain Shepperd, taken at New York, on the 2d of May, 1872, before a judicial agent of this Government. To this deposition the Department of State replied by transmitting a copy of an opinion of Attorney-General Bristow, in which that high functionary stated that he had examined Shepperd's testimony, and had found therein cause to suspect that the register of the steamer was false and in violation of the navigation laws; (that the papers submitted furnish information which may give rise to a suspicion that the registry of the steamer was fraudulent and in violation of the navigation laws.)

Can it, then, be doubted that if the said Attorney-General had taken steps for an examination of the registration document, for which purpose the Department of Justice had greater facilities than this legation, that he would have reached the same conviction as that recently set forth by his present successor?

Besides these circumstances is the one that, many months before the capture by the *Tornado* took place, an officer of the Spanish navy, who commanded the war-steamer *Bazan*, then at the port of Colou, (Aspinwall,) animated by sentiments of deference toward a nation with which he knew that his own government had strong relations of friendship, addressed a communication, under date the 27th of July, 1873, to Commander Reed, of the United States war-steamer *Kansas*, in which he said to him, "I denounce the steamer *Virginius* in the name of the Spanish government as a pirate, and request you that, in consideration of the good relations existing between the two countries, you may arrange for sending that vessel to the United States for trial before the courts of her own country, when Spain will adduce the proof in her possession, with the understanding that if this proof should not be found sufficient for the condemnation of the *Virginius*, as a representative of the Spanish government I assume, on behalf of Spain, the obligation to pay all damages and expenses which may be occasioned by the detention of the vessel."

It may be presumed that this communication was transmitted without delay by Commander Reed to the Secretary of the Navy at Washington; and in view of this, and also of the previous communication of the undersigned on the same subject, it is difficult to comprehend how Spain could have done more, compatibly with her dignity, to incite the United States to expose the piratical character of the vessel referred to, and to set on foot a serious investigation in regard to the beginning and course of her career.

The undersigned duly appreciates the responsibility which, pursuant to municipal law, is incurred by the forging of solemn documents which attest the nationality of a merchant-vessel on the high seas, and secures immunity for the flag which is rightfully displayed. The duties of the profession to which he has devoted himself have heretofore required from him a deliberate study of maritime jurisprudence, and he can do no less than protest against the doctrine that such a forgery in no way involves a possible question upon the subject for controversy with a foreign government, and that it cannot become a subject for consideration in view of international obligations, and does not constitute a subject for complaint on the part of any foreign government.

Spain complains that the United States have not prevented the organization, the departure, and the active prosecution of the different hostile enterprises against Cuba in which the *Virginius* was an agent. The United States answer that they took efficacious measures toward preventing her departure from New York, and to this Spain replies by

pointing to the fraudulent documents issued by the collector of customs at that port, and insists that those show the very reverse of having taken efficacious measures of prevention, and the undersigned is not aware of any principle of international law which should prevent Spain from referring to those spurious documents.

It may also be said that the offense of those in this country who promoted the expedition adverted to was an offense against the United States, inasmuch as their schemes were directed against Spain, and that municipal laws were violated in the act of infringing the precepts of a good international understanding; and that unless this Government can show that it made use of due efficiency for preventing the departure and prosecution of the expedition, this offense becomes one of the United States themselves, whereby, pursuant to international law, it behooves them to make ample reparation to Spain.

How can it be pretended that Spain is incapacitated from proving an act which demonstrates the absence, as has been said, of proper preventive measures?

This is another phase of the question: the Tornado took on the high seas a vessel, on board of which there was a military force for the invasion of the island of Cuba, thereby carrying death and destruction to the loyal subjects of Spain and their property.

The United States interpose and deny the legality of the capture as alleged by the President of the United States in his annual message to Congress, because the captured vessel was duly registered at the port of New York, and formed a part of the mercantile marine of the United States, and, having the certificate of registry in the usual legal form, her capture took place in derogation of the sovereignty of the United States. If, then, the two governments, actuated by desires for peace and friendship, had not succeeded in agreeing upon the bases of the arrangement contained in the protocol of the 29th of November, 1873, is it believed that Spain would not have been able to justify the capture before the great powers of the earth, by showing that long before the capture took place she had called the attention of the Government of the United States to the circumstance that the *Virginus* was not a vessel of those States, and that all the representations in regard to her being true which were made at the time referred to, pursuant to them it had been determined that the cruiser which made the capture should operate?

The undersigned can do no less than maintain that the granting of a false register and a false certificate of register to the *Virginus* show that this Government did not attend with due efficacy to preventing the departure of the expedition, which constituted a hostile act against the sovereignty of a country with which the United States were at peace.

To investigate and determine the measure of the efforts which ought to have been made towards preventing the said piratical expeditions, Spain accepts the criterion followed by the United States at Geneva, where, moved by zeal for their own interest, they declared such a measure of efficacy to comprehend a co-operating zeal, continuous application, "uninterrupted endeavors, the employment of all the faculties adequate for the purpose, and the unwearied and undelayed granting of attention, activity, and assiduity, (enlisted zeal, steady application, constant effort, exertion of all the appropriate faculties, and, without weariness or delay, attention, industry, and assiduity.)"

The second part of the answer of the Secretary of State, so far as it represents the impossibility of finding in the note which the undersigned had the honor to address to him, any just ground on which the respon-

sibility of the United States for the acts of the *Virginus* might be placed, appears to rest upon two different suppositions: first, that the vessel was not, according to its construction and equipment, a military cruiser; and, secondly, that on her first voyage it was not proposed to wage war on the subjects of Spain.

The explicit and uncontroverted testimony of Captain Shepperd and of Varona may not have engaged the attention of the Department of State. It, however, shows, beyond all doubt, both the proposition and the endeavor to attack the commerce of Spain, and from the moment when the *Virginus* did not attempt legally to fly the flag of any country, as in point of fact she did not carry any, such a circumstance constitutes, according to the law of nations, piracy. According to the same law there is no special manner of construction which can or ought to be required for piratical vessels, and on this ground, even if there were no other, the undersigned is confident that the honorable Secretary of State will think proper to reconsider the matter.

In connection with the two preceding suppositions, the Secretary of State alludes to the small quantity of war material and the few soldiers taken by the tug *Virginiia Seymour* on board the *Virginus* prior to the departure of this vessel beyond the jurisdiction of the United States, and to the circumstance that many of the said soldiers were subjects of Spain, implicated in the insurrection on foot in the island of Cuba; but it is not on this account said that the expedition was purely of a commercial character, and on that account approved by municipal and international law, or that the United States ought to have allowed it to depart. If it shall be pretended that the first voyage of the *Virginus* was legitimate, in view of the presumed legality of her papers, the obvious answer is, that those papers were *false, counterfeits, and fraudulent*. Several of the crew have deposed that the voyage which it was really proposed that the steamer should make was not correctly stated in the list of the crew lodged at the custom-house at New York. The true destination of the *Virginus* and of the *Billy Butts* was not the neutral port of Curaçoa, if that can be called neutral according to international law, in respect to a civil commotion not recognized beyond the country where it exists.

The character of the cargo of the *Virginus*, specified in her manifest, to wit, one hundred and seventy barrels of bread, of the value of seven hundred and eighty dollars; two cases of saddlery, of the value of four hundred dollars; four cases of clothing, of the value of three hundred and fifty dollars, together with the negative omission of giving security that a legitimate use would be made of her certificate of registry, constitute a sufficient motive for suspicion to justify the collector of customs in detaining her and in setting on foot proceedings looking to her confiscation.

It will not be denied that, at a time a clearance was granted to her, the *Virginus* had committed acts which made her liable to condemnation by the Government of the United States, pursuant to which the collector of customs would have been obliged to detain her, to subject her to trial, and prevent her going to sea and engaging in piratical acts. That this is true is proven by the recent decision of the Government of the United States, and which would have been carried into effect had it not been for the sinking of the *Virginus* before her arrival at New York from Bahia Honda, for solely on account of the irregularity which has been recognized to have existed at the time above mentioned could the vessel have been detained and confiscated. In conformity also to the law of 1792, the collector of customs at New York was, in

the opinion of the undersigned, *guilty of unfaithfulness to his official duty* when he granted a clearance to the *Virginius*.

To this end, and with reference to the requirements of the active and efficient repression of criminal acts, which is the obligation of every country, both in respect to its interest as well as that which it does in respect to the interests of other countries with which it may be in relations of peace and friendship, the government of Spain considers that it has ground for asking reparation from the United States, and this not so much only on account of the first voyage of the *Virginius*, but pursuant, as the undersigned took care to state in his note, on account of all the subsequent acts of the said steamer, in which she received aid and protection from the consular and naval authorities of this country.

With reference to those acts which constitute an infraction of the local laws, and which, from the moment they were directed against Spain, constitute an offense in which the United States were participators unless they can exonerate themselves from such a participation, the undersigned calls the attention of the honorable Secretary of State to the following doctrine laid down by a judge of the Supreme Court of the United States, which, as a material for a text and for greater precision, is copied as follows, in English :

When a person forms the *guilty* intention of carrying on a military expedition or enterprise from the United States against the territory or dominions of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, and shall provide or prepare the means to do so, *his crime is complete*. The expedition or enterprise which the party must contemplate involves a collection or combination of men who are to become members of the expedition. The subscription of money or munitions of war merely does not violate the language of the act of Congress under consideration if no military expedition from the United States be set on foot or contemplated, and for this reason the subscriptions to the cause of Greece, Hungary, or Italy were not the subject of judicial cognizance. But the subscriptions of money, provisions, munitions of war, or the means of transportation, the purchase of bonds issued by a revolutionary government, junta, or military chief, having for their object to afford money, provide men in the United States who shall carry on hostilities against a friendly state or person, is a violation of the act of Congress, and all the persons who participate, in that form, with the contemplated enterprise, are guilty as principals, and are involved in the same penal consequences. The misdemeanors all accessories share as principals, and the accessory is he who by hire, commerce, counsel, or conspiracy, and he who by showing an express liking, approbation, or assent to an illegal enterprise, does aid and abet a party to commit it. We quote the language of the act of 1818, to exhibit its broad and comprehensive import and the sternness of its rebuke to all the transactions we have alluded to :

"If any person shall, within the territory or jurisdiction of the United States, *begin or set on foot* or provide or prepare the means for any military expedition or enterprise to be carried on thence against the territory or dominions of any state, colony, district, or people with whom the United States are at peace, every person so offending shall be deemed guilty of a high misdemeanor."

The terms of this act do not require that the expedition or enterprise shall be completed, or that it should even leave the United States. The language is, if any person shall *begin* or "*set on foot*." It does not require that all its arrangements shall be perfect, and that it shall be in condition to leave the United States. The act stigmatizes as unlawful the preparation or provision of the means to carry on the expedition or enterprise. Thus, whether the execution of the enterprise or the organization of the expedition is "*begun*" or "*set on foot*" by the enlistment of recruits or the collection of arms and other munitions of war or transports, the result is the same. If the object of such preparations is to equip or fit out an expedition from the United States to carry on hostilities against a friendly state, the acts done in furtherance of that object are illegal and subject the offender to prosecution. Nor is it necessary that the expedition should have been exhibited in the United States in martial array or under military organization or discipline. If the members composing the expedition were to have leave as passengers on merchant or passenger vessels, without arms or equipments, to meet upon some coast foreign to the United States, there to be equipped and to be employed against a friendly power, that would fall within the prohibition of the statute. Whether the expedition is an illegal military expedition, does not depend



upon its employment in the United States, but its ultimate destination and object. If its ultimate destination is a foreign state at peace with the United States, and its object hostile to the government or people of that state, or in opposition to their institutions and laws, and the expedition was begun by any arrangements among the men within the United States, or by preparations made there, then the act of Congress has been violated by all who are members of the expedition, and all who in the United States have knowingly and willfully contributed to its preparation.

If the question were decided in the light of this opinion, can it be said that this Government has adopted the means necessary to prevent the opening of subscriptions for the purpose of collecting funds, provisions, munitions of war, means of transport, and the purchase of bonds by the Cuban club of New York, for the purpose of promoting and aiding the insurrectionary war in Cuba?

The Secretary of State concludes his reply to the note of the undersigned by setting forth the reasons why the Department of State finds no analogy between the case of the *Virginus* and that of the *Alabama*, or that of any other of those vessels which were equipped in the ports of Great Britain during the civil war in the United States, and were submitted to the tribunal of arbitration at Geneva, pursuant to the treaty of Washington.

Those reasons are the absence of a state of war between Spain and the insurgents in Cuba. The circumstance that the *Virginus* was not equipped, armed, or manned in the port of New York as a regular vessel of war; that that vessel was not employed to cruise on the high seas, destroying the merchantile marine of Spain; that Spain did not demand damages for injuries inflicted on Spanish subjects as such, but damages resulting to Spain in her character as a nation or government, in consequence of the relations which she alleges to exist between the acts of the *Virginus* and the present insurrection in Cuba; but, notwithstanding this want of analogy which is said to exist between the complaints occasioned by the *Virginus* and those to which the acts of the *Alabama* gave rise, the Secretary of State insists that the formal declaration of the arbitrators at Geneva, relative to what are called "indirect claims," presented by the United States, is a decisive argument against the claims which are now presented on behalf of Spain.

It is enough to say in reply that the undersigned never thought of appealing to the acts of the tribunal of Geneva as an authority, but as a criterion placed there by the United States to express and define the limits to which the fulfillment of the duties of watchfulness and repression should be extended. Nor was it his intention to restrict the complaint which he is charged to present to asking for a compensation for damages and losses of nation from nation; but he proposed to include also the damages inflicted by the acts of the *Virginus* on subjects and property of Spain in the island of Cuba; so that the precedent invoked by the Secretary of State is in every respect inapplicable to the matter under discussion: first, because, according to the admission of the Secretary of State himself, it does not rest on analogous facts; and, second, because the decision of that tribunal has nothing to do with the peculiarities of the present case.

The case would be different if the claims known under the name of "Fenian claims," presented, as the undersigned has understood, by the government of Great Britain, and now existing against this Government, for damages and wrongs inflicted on itself and on its subjects, had been submitted to the tribunal of Geneva, and the arbitrators had decided that that class of claims are not, according to the principles of the law of nations, matters for the concession or appraisal of damages and losses; and, if it had agreed or determined that the United

States had been remiss in the fulfillment of their duty, then, and not otherwise, would the precedent have been applicable to the present occasion. For this reason, and in order to better insure the continuance of the good relations existing between the two governments, the undersigned deems it his duty to submit to the consideration of the honorable Secretary of State some of the most notable of the series of incidents which have given rise to the reclamation that he is intrusted with presenting to the friendly consideration of the Government of the United States.

The insurrectionary uprising which took place at Yara in 1868 did not find extensive sympathies in the island of Cuba, and, although the superior political authority was badly provided as regarded the question of material force for encountering that traitorous manifestation, it was but a little while before its locality was limited to the eastern part of the island, where, as the consul, Mr. Hall, wrote to the Secretary of State, Mr. Seward, on the 18th of November, 1868, "the wild nature of the country, and the complete absence of railroads and even of ordinary roads, militated greatly in favor of the insurgents." A general uprising of the Creole population not having taken place, on the one hand, as had been expected by Aguilera and Cespedes, and the disposition, on the other hand, to temper justice with mercy, induced the captain-general to publish what from its spirit might be regarded as a general amnesty, and by favor of which many Cubans left the island, a large part of them coming to settle in the United States.

It was soon discovered that these disaffected persons, among whom were various owners of valuable estates in the island of Cuba, had returned, in their place of refuge, to their perfidious intrigues against the authority of Spain in Cuba, and that for said purpose they were selling or bargaining to sell their landed estates.

The want of popular support, before alluded to, and other causes, reduced the insurgents in the eastern extremity of the island to the condition of wandering bands, destitute of arms and munitions of war, with no other access to the ports and places where it was possible to communicate with countries beyond the Gulf than those which temporarily and under certain circumstances may be held by parties of bandits or rebels in all countries of the world. With the view of preventing their property and effects in the island of Cuba from being sold, and their proceeds applied in stirring up and sustaining the rebellion, the superior authorities, not without waiting for manifestation of disloyal sentiments and purposes, decreed the revision by the government of such sales and conveyances.

It is certain that, in the civil war of this country, the Federal Government was not slack in its measures of seizure and confiscation when the necessities of the case seemed to require it.

The Spanish government on its part took great care that, in the execution of its decrees, citizens of the United States who were owners of property in Cuba, and innocent of any participation in the acts of the rebels, should not be unduly injured, but it was never easy to harmonize suavity with justice in cases, for example, of eminent banking and commercial houses of New York and other places, who lent their names to a false pretext of being real purchasers by payment of the entire value, when in reality they only held the estates in trust for the purpose of covering and protecting persons who were engaged in violating the laws of Spain.

Isolated cases have doubtless occurred—and where does it not happen in the gloomy periods of internal strife?—of injury to property of for-

ign subjects or citizens; but in all of them, the undersigned does not hesitate to affirm, the Spanish government has sincerely and in good faith endeavored to recompense the damages it has occasioned.

The difficulties which presented themselves in carrying into effect a decree which circumstances rendered indispensable, were increased and aggravated by cases of natives of the country, who suddenly showed themselves provided with documents with which they claimed to prove their quality of citizens of the United States, and the no less surprising rapidity with which some persons, who at the breaking out of the rebellion went away from Cuba, maintained that subsequently to their arrival in the territory of the Union they had acquired citizenship in the country to which they had fled, and in consequence thereof asked indemnity for the property which they had left in the island of Cuba; and claims of this character having become numerous, Spain agreed to the establishment of a mixed commission of arbitration to hear and determine them in conformity to law and justice.

The undersigned does not undertake to deny that at times extreme measures have been employed with respect to the personal liberty and to the property of suspicious individuals at the beginning of the insurrection, and after the generous moderation shown by General Dulce, by order of the government at Madrid, only appeared to serve as stimulus to the insurgents to commit acts of the greatest atrocity against loyal subjects of Spain. The rebels inaugurated their movement by burning and destroying sugar-mills and cities, and hence resulted the necessity of carrying into effect severe and energetic measures of repression—measures which rendered legitimate, so far as they could not be defeated, the interests of self-preservation and defense.

But it cannot be said that such rigorous measures are exclusively those of Spain. The code of instructions for armies in the field, published by the War Department of the United States during the civil war which terminated in 1865, authorized the destruction of every kind of property belonging to the enemy, and the penalty of death on every one who, in a section of territory occupied or subjected by one of the Federal armies, attempted to resist said army or the authorities which it had established. The seizures ordered in Cuba had a precedent, for want of others, in the laws passed by the Congress of the United States, and which imposed on the President the duty of taking possession of the property of the rebels of the South, and of confiscating it. Notwithstanding the great circumspection and caution which may have been observed by the authorities of the United States, the fulfillment of those laws gave rise to onerous and repeated claims for damages and ill-treatment inflicted on foreign subjects, and in consequence thereof a mixed commission has held a number of sessions in Washington to award indemnities for what was done, for damages inflicted on subjects of Great Britain.

That the insurrection at Yara in October, 1868, did not meet with sufficient support from the people of Cuba, and that its leaders comprehended the want of men, pecuniary resources, and munitions of war, is abundantly proved by the circumstance that as soon as they succeeded in establishing communication with the United States they began negotiations for obtaining funds and fitting out military expeditions.

On the 14th of November, 1868, Mr. Seward, at the time Secretary of State, urgently solicited the attention of Attorney-General Evarts to the rumors that were then in circulation respecting an expedition which was being prepared against the island of Cuba, and the marshal of

New York, Mr. Murray, gave information respecting the matter on the 19th of November of the same year, in the following terms, which are transcribed in English :

It is true that a number of well-known filibusters have opened an office at 498 Broome street, in this city, for the ostensible purpose of enlisting men for the invasion of the island of Cuba, but really with a view of making money out of the resident Cubans in this city who sympathize with their cause.

On the 19th day of March, 1869, the predecessor in this legation of the undersigned, Señor Lopez Roberts, informed the Department of State that a steamer called the *Salvador* was hastily preparing to form part of a military expedition against Cuba; and accordingly said steamer sailed from Key West at the beginning of the month of May following without being obstructed in any manner, carrying on board a hundred and fifty recruits and 2,500 cases of arms, which she landed on the 14th of the same month on a point of the island of Cuba called *Nuevas Grandes*, according to the testimony of one William C. Pinher or Finher, put in the hands of the Secretary of State on the 18th of December, 1869, among several other documents, on which is founded a request for a recognition of belligerency in favor of the insurrection inaugurated by *Céspedes*. In the Department of State doubtless exists the antecedents of the *Mary Lowell*. When that vessel was overtaken and captured through steps taken by the agents of Spain at *Ragged Island*, her fitters-out had the impudence to pretend that she was bound to *Vera Cruz* to accomplish an ordinary operation of peaceful commerce, and even claimed damages of Spain for the capture. The testimony, however, existing in the Spanish-American commission at Washington fully proves the falsity of that assertion. The principal furtherers of that expedition were *Doctor Bassora*, *Plutereo Gonzales*, and *Doctor Arango y Mora*. The military and naval officers were *Captain Bonneau*, *F. T. Cisneros*, and *Thomas Jordan*. This brig, laden with arms and munitions of war, took out a fraudulent clearance for *Vera Cruz* from the custom-house at New York in January, 1869, her true destination being *Rum Cay*, at which point she was to join the steamer *Henry Burden*, in command of her owner, *Campbell*, and on board of which were *Thomas Jordan* and forty or fifty American and Cuban soldiers. From *Rum Cay* the two vessels mentioned proceeded to *Ragged Island*, wheret he arms were all to be placed on board the steamer and the entire expedition landed on the coast of Cuba. During their stay at *Ragged Island* the expeditionists passed the time in military exercises, but at the moment when the voyage was arranged, the vessel which was conveying them, together with her cargo of arms, was captured by a Spanish cruiser. The steamer *Henry Burden* escaped, and the greater part of the expeditionists succeeded in returning to the United States. This was the first attempt of *Thomas Jordan*, a person notorious for the numerous offenses which he has committed against the laws of the United States and for being in quality of agent of *Aldama*, the present chief of the Cuban junta in New York, at which point, according to news received by the undersigned, he continues projecting hostile expeditions against the dominions of Spain.

When it came to be understood in the island of Cuba that there was meditated an invasion of its soil proceeding from and organized in the United States, the superior political government, in manifestation of its firm purpose that the insurrection, held at bay in the interior should not receive aid from abroad, published on the 24th of March, 1869, a decree in which it was said that every vessel captured on the high seas in proximity to the island, and which had on board men, arms, and munitions, or other articles which could in any manner contribute to the

promotion, encouragement, or maintenance of the insurrection, should be held for an enemy and treated as a pirate, in accordance with the ordinances of the tribunals of marine, and that every person captured on board of such a vessel should be put to death by arms.

On the 3d of April, 1869, the Secretary of State of the United States made known to this legation the regret which he experienced at seeing that this decree had disregarded the treaty of 1795, in virtue of which, according to the honorable Mr. Fish, the citizens of the United States and their vessels had the right to carry to the enemies of Spain every kind of goods which were not contraband of war, subject only to the requirements of a legal blockade, and that therefore the United States could not consent that any of its citizens should be punished for merely using this privilege.

Subsequently, on the 7th of July, 1869, the same superior authority, in the exercise of an unquestionable right of sovereignty, closed all the ports and places of the Banda Oriental to commerce of importation and exportation, except a few which were mentioned, in which there were custom-houses; it prohibited the introduction of powder, arms, and warlike stores, whether military or individual, for the service of the insurrection; it decreed the seizure of the vessels and the punishment of the crews that were engaged in conveying said goods, person, or material, and denounced as a pirate every person who should enter the island with armed hand.

Justly uneasy at the success attained by the Cuban insurgents who were refugees in the United States, and at the tone of the note to which reference has just been made, Señor Lopez Roberts, bearing in mind the proclamations which had been issued under similar circumstances by Presidents Taylor in 1849, Fillmore in 1851, Pierce in 1855, and Buchanan in 1859, in which every citizen of the United States was warned and advised against every kind of fellowship with hostile expeditions against the island of Cuba, and was notified that whatever might be the punishment inflicted on them they would not be protected by this Government, intimated to the Secretary of State, in a communication dated the 5th of April, 1869, the propriety of issuing a new proclamation of the same purport.

Unfortunately the intimation of Señor Lopez Roberts was not heeded, since the Secretary of State replied: "At present this Government is not aware of any invasion of the island of Cuba, or of any other possessions of Spain, threatened from the United States, nor is any such believed to be in the course of preparation."

The note of the Secretary of State refusing to accede to the wish of this legation that a presidential proclamation should be issued bore date of the 17th of April, 1869, and twelve days afterward, as appears from the declaration of one Welsh, transmitted to the Department of State on the 1st of June, 1870, that person had engaged to carry from Beaufort, in North Carolina, to the coast of Cuba, in the schooner called Grapeshot, of which he was captain, an expedition in command of one Antonio Jiminez. In consequence thereof Welsh proceeded from Beaufort in the beginning of May, touching on the way, on the 27th of the same month, at Turk's Island, at which point the American consul went on board and participated in manifestations and speeches in favor of the Cuban insurrection; and on the following day, the 28th, the expedition landed at Guantanamo, in the southeastern extremity of the island of Cuba.

The expedition of the Grapeshot is memorable on account of claims which were made against Spain for the shooting of two individuals

called Speakman and Wyoth, captured with arms in hand immediately after the landing. In view of the evidence of the captain of this schooner, there is no doubt that these two individuals, far from being innocent passengers, put ashore in Cuba against their will, as was falsely alleged, sailed from the United States, remained on board of the *Grapeshot*, and finally landed in Cuba with the well-meditated purpose of taking part in acts of death and destruction in which were engaged the wandering bands of *Cespedes*.

In three weeks after the said reply of the Secretary of State, the steamer *Perit*, the property of Messrs. Spofford, Tileston & Co., of New York, and commanded by George G. Hetcher, was falsely cleared at the custom-house of that city, for Kingston, in the island of Jamaica, with a large cargo and three hundred military men, under the orders of the same Thomas Jordan who was one of the officers of the expedition of the *Mary Lowell*. In the packet of instruction given by the owners of the steamer to the captain, dated 4th of May, 1869, it is said, "The vessel under your command will carry a clearance for the port of Kingston, in Jamaica, but before arriving at that place you will stop and will unload at any port designated to you by Francisco J. Cisneros, agent of the shippers, who will be on board, or, in his absence, at whatever place may be indicated by General Thomas Jordan, who will also be on board. Until the unloading has been effected, you will consider yourself under the orders of the above-mentioned individuals. If, on the way to the port which may have been indicated to you for the purpose of unloading, you should be followed by a cruiser or armed vessel, you will await orders from said individuals with respect to avoiding said cruiser or armed vessel, and you will ask them to give you your instructions in writing."

This expedition landed at Bahia de Nipe in nine days after its sailing from New York. The news was published in the newspapers of that city about the time of the departure of the *Perit*, and it never has been denied to the knowledge of the undersigned that some of the agents of Marshal Murray had knowledge of what was being plotted, because, their intervention having been sought in the matter, they lent their assistance in having released a young man whose inexperience had been abused in enlisting him for the expedition.

To this day neither the vessel nor her owners, nor any of the persons who contributed to said formidable enterprise, has been brought to punishment.

As the United States complained that British territory has served the confederates as a maritime base and arsenal from which they were provided with munitions of war, so in like manner could Spain complain that from the month of October, 1868, the territory of the United States has been the only and the prolific purveyor of men and munitions of war for the insurrection of Cuba.

The distinguished juriconsult who spoke in behalf of the United States at Geneva uttered these words:

All commercial contracts, including the raising of money by loan, the building or fitting of vessels, the sale of arms or munitions or other supplies in aid of insurrection or domestic rebellion in a foreign state, are absolutely condemned as immoral by the laws of England, and are proscribed by the courts of justice.

Soon after the executive power at Washington had refused to issue the proclamation whose opportuneness had been indicated to it, there commenced, as the undersigned proposes to show, active, constant, and systematic exertions on the part of the Cuban junta to supply from the United States the want which the rebels had so keenly experienced, as well of men and cash as of arms and vessels.

The ship-owners did not step forward to freight their vessels for such illicit undertakings, and consequently the junta found themselves obliged, in many cases, to acquire them as property, while a citizen of the United States, bought for this purpose, gave his house as the true owner. The insurance companies refused to issue policies. Funds were obtained by means of subscriptions, and principally by the sale of bonds issued in the name of the so-called republic of Cuba, by its agents in this country; but as said bonds were not payable until the insurrection should succeed in wresting Cuba from the authority of Spain, this condition of eventual and contingent payment made of each purchaser a new participator in the designs of the insurrection. The zeal of the junta of New York and the hopes that they had of escaping punishment caused its members to put aside all reserve, as was remarked by the consul of Spain in the beginning of June, 1869, to Mr. Pierrepont, then district attorney of the United States, and consequently that functionary immediately submitted the facts to a grand jury, who, on the 16th and 23d of that month, laid before the court presentments for violation of the sixth section of the law of April, 1818, against José Morales Lemus, (titled minister of the so-called republic,) José M. Bassora, (secretary of the junta,) Francisco Fesser, Mariano Alvarez, José M. Mora, (implicated in the affair of the *Virginus*,) Ignacio Alfaro, William C. Ryan, (shot recently at Santiago de Cuba,) Doctor J. J. McNulty, Doctor Dubose, (both subsequently found on board of the *Hornet* at Philadelphia,) and various others.

All these individuals were apprehended and called to judgment, and having given security that henceforth they would respect the laws, and would present themselves when asked for, they were set at liberty.

Only the district attorney at New York, or the Attorney-General at Washington, could have compelled the trial and punishment of these malefactors, but up to this day nothing of the kind has been attempted. Ryan escaped by force from the officer who had him in custody, but although he was arrested at a subsequent period, never was he punished for any of his offenses until he was captured on the *Virginus*.

Hardly had the mentioned individuals of the junta been set at liberty under security when they began again their intrigues to send a grand expedition on the steamer *Catharine Whiting*, in which, thanks to the energy displayed by Marshal Barlow, in virtue of orders from Washington, they were completely baffled.

The expeditionists were arrested, but immediately set at liberty without punishment. The vessels were seized previous to proceedings of confiscation, but they were afterward restored to their owners, as happened at a subsequent period with the *Hornet*. In a word, nobody suffered the slightest penalty for this violation of the law.

At the same period of which we have just been treating, that is to say, at the time when the executive power at Washington refused to issue the proclamation solicited by this legation, the Cuban junta of New York concerted measures to put on the ocean a vessel of war completely armed and equipped, under the flag of *Cespedes*.

They were not long in gathering funds, and in the beginning of July, 1869, the steamer *Hornet* was purchased from the United States, as happened with the *Virginus*, and taken to Philadelphia for equipment; and shortly after said steamer was denounced to the authorities by agents of the Spanish government, they having sufficient reasons therefor. On the 1st day of August she was falsely cleared at the custom-house at Philadelphia for the port of Queenstown. In going down the river, having on board McNulty and Dubose, two of the individuals pre-

sented at New York, she was stopped by the custom house officers, but released afterward, notwithstanding that Marshal Barlow had made known to the Attorney-General that, in his judgment, said vessel had an illegal object, as the marshal disclosed in these significant words: "She is bent upon mischief." From Philadelphia the Hornet went to Halifax, and thence returned to the jurisdiction of the United States, receiving her arms off the coast of Massachusetts, and her coal and provisions off that of New York, from the same tug which subsequently supplied the Virginus, after which she hoisted the insurgent flag of Cuba, and sailed on her piratical errand.

The legation of Spain informed the Department of State, by a note dated September 28, that these things were going on. The marshal in New York had knowledge of them early enough to have prevented their accomplishment, as appears from a communication addressed by that functionary to Attorney-General Hoar, under date of October 1, 1869, had it not happened, as he says, that "*there was nothing to prevent it.* On Saturday last all the revenue-cutters were withdrawn from under my order, and removed from their stations in the harbor without any information to me of the fact. I only accidentally found it out, and the harbor has since that time been free from cutters and detectives to stop anything."

Being forced by stress of weather, the Hornet took refuge at the mouth of Cape Fear River, having on board one hundred and sixty seamen, eight officers, and eight cannons, and when the custom-house officers visited her she was only able to show them a commission issued by the so-called republic of Cuba.

On the 3d of October, 1869, the collector of the port of Wilmington, N. C., asked the Secretary of the Treasury at Washington for instructions, and on the day following the vessel was seized for violation of the third section of the neutrality law. Her officers were arrested and examined before a United States commissioner, and, having been found guilty, were sent for trial to the eastern district of New York. The United States, however, never really instituted legal proceedings against them, and they were finally discharged.

A petition was presented to the court at Wilmington for the surrender of the vessel, as being the property of the republic of Cuba, but this petition was denied by the judge, as coming from a government or body-politic whose existence was not known, and the vessel was consequently condemned and ordered to be sold. The Hornet was not sold, but was delivered to a partisan of the Cuban insurrection, in consideration of the payment of \$2,500 to the United States as the costs of the prosecution, (no account was taken of the expense to which Spain had been put,) bail being also furnished in the sum of \$50,000 that she should not again be employed in acts declared illicit by the laws of the United States. The vessel immediately returned to New York, and plans were again set on foot to use her for the same purpose as before.

In vain were the protests of the consul-general of Spain in New York. The correspondence which passed between that functionary and the district attorney, and between this legation and the Department of State, in December, 1870, in relation to this vessel, was published among the documents sent to Congress by the President on the 4th of December, 1871; and at the close of the first volume of "Documents relating to the treaty of Washington," it is admitted by the Department of State that the Hornet conveyed another military expedition to Cuba, and that, having been blockaded in the harbor of Port au Prince by a Spanish war-vessel, she succeeded in making her escape through the interposition of



the United States, without any steps having been taken with respect to the vessel or to the aforesaid bail of \$50,000.

The honorable Secretary of State cannot deny that the original fitting out of the *Hornet*, together with her arming off the coasts of Massachusetts and New York, constituted a *hostile act* against Spain, committed within the jurisdiction of the United States. In view of the facts which have just been stated, it is impossible to argue that a simple commercial operation was had in view with goods contraband of war. The *Hornet* was an armed cruiser, just as was the *Alabama*, with this difference, that the former of these vessels was armed and equipped entirely within the jurisdiction of a friendly or neutral country, which was not the case with the latter. In fitting out this vessel, the members of the Cuban junta and their partisans violated the acknowledged rights and duties of asylum, since they made use of the ports of the United States as a basis for their naval operations against Spanish commerce, and, under the protection of their asylum and commercial transactions in contraband goods, they did what in fact constitutes *war* against a friendly country.

The undersigned has dwelt at some length upon these five military expeditions, conveyed by the *Salvador*, the *Grapeshot*, the *Mary Lowell*, the *Catharine Whiting*, and the *Hornet*, since they took place at such brief intervals, either before or after the refusal of this Government to issue the proclamation referred to, and of its having thus furnished ground for, and in a great measure rendered necessary, the rigorous decrees promulgated in Cuba in relation to foreign vessels, to the seizure of the property of suspected persons, and to the enforcement of the military penal code against the enemies of Spain captured on the island with arms in their hands. The expeditions already enumerated were speedily followed by others, as the principal of which may be mentioned those of the *Lillian*, *George V. Upton*, *Florida*, *Edgar Stewart*, *E. D. Webster*, *Anna*, *Fanny*, and *Virginus*.

The *Lillian* sailed from Cedar Keys, Fla., October 5, 1869, having Eloy Camacho on board as mate. This was the same person who had charge of the Spanish transport *Comanditario* when that vessel was surrendered to the insurgents, and the same who subsequently sailed from New York on board of the *Virginus*. Said vessel carried a large cargo of arms and upward of five hundred recruits, and was under the command of the so-called General *Goicouria*, the same who was arrested in New York on board of the *Catharine Whiting*, and subsequently discharged by Commissioner Betts.

The Government of the United States had ample information and notice with regard to this expedition.

The military commander on board of the *George V. Upton* was one T. J. Cisneros, the same who, in company with Thomas Jordan, took part in the expedition of the *Mary Lowell* and in that of the *Perit*. Her captain, Doruin, was second captain on board of the *Hornet* at the time of the detention of that vessel at Wilmington, and he was set at liberty under the circumstances already referred to. The *Upton* sailed from Brooklyn, N. Y., May 15, 1870, with one hundred and seventy-eight recruits. Even before reaching Sandy Hook she took a steam-lighter on board, for the purpose of effecting a landing on the coast of Cuba, which was done eight days afterward; and while she was still near New York she received a cargo of arms, in accordance with an arrangement previously made, from the schooner *Quickstep*. The *Upton* went from Cuba to Aspiuwall, and on the 30th of May, 1870, she took another expedition, which she also landed in Cuba on the 11th

day of June of the same year, returning to New York on the 20th of the same month.

For these acts the Government of the United States inflicted no kind of penalty either upon the vessel, her owners, or the persons who fitted her out.

From an examination of the affidavits sent to the Department of State December 15, 1869, by the Cuban junta of New York, in support of the claim of the insurgents to be recognized as belligerents, it appears that, shortly after the breaking out of the insurrection, one Manuel Quesada had the chief control of everything relating to military affairs, and that he was succeeded in this position by Thomas Jordan, a citizen of the United States, and a certain Agramonte. It further appears, from the affidavit of Adolfo Varona, that this Quesada was sent to the United States in 1870 by Cespedes in charge of what was called a foreign mission, it being his duty to organize and direct military operations, and it also appears that this same Quesada for a long time had the military command of the *Virginus*.

On the 8th of December, 1873, the aforesaid Quesada published a statement in the *Herald* of that date, the heading of which was as follows: "The representative of the Cuban Republic in foreign countries to His Excellency the President of the United States." In said statement the assertion was made that fourteen steamers, sixteen war-vessels, and forty thousand rifles had been purchased for the benefit of the insurrection. It is unnecessary to say that this enumeration does not include the vessels which were only hired or chartered. The article in question being a curious one in another point of view, inasmuch as it reveals the reasons why the recognition of belligerent rights was so earnestly solicited, an extract from it is given below:

When this population decided to break the ties which bound them to the mother country, propositions were made to inaugurate the movement in April, 1869, at which time it was thought all the arms and necessary supplies could be obtained and properly distributed; but the intention having been discovered by the Spaniards, the outbreak was anticipated by several months, and on the 10th of October of the year previous it took place. The Cubans preferred to go to the field without arms, rather than remain and be executed in cold blood by the Spaniards. *From that moment the only question has been how to obtain arms from abroad.* The Spanish government, being well aware that the oppressed people of the Great Antilles had means enough to arm their forces and to create a navy, confiscated the property of a great part of them. This property amounted to several hundred millions of dollars, as can be proved by the official records in Havana. This measure could not, however, prevent the patriots from buying arms, though it diminished, to an immense extent, the revolutionary resources. By private subscriptions of Cubans only, there have been purchased 14 steamers, 16 sailing-vessels, and 40,000 rifles. Unfortunately, as the requisite funds could not be collected rapidly, it was impossible to apply them on as large a scale as necessary to evade the Spanish blockade, and not to break, in any respect, the neutrality laws of this country. The expeditions, sometimes owing to the scarcity of resources, and at others to the want of experience—natural under the circumstances—have not always arrived at their destinations. It was essential to employ a greater amount of money than could be obtained from private subscriptions. There were three methods of raising such money—sending privateers to sea to prey upon Spanish commerce, exchanging for funds those products remaining within the extent of the insurgent lines, and the negotiation of a foreign loan. To the first was presented the obstacle that the worthy representatives of the Cuban republic at that time did not dare to assume the responsibility, as they were made aware that the American Government would not view favorably the existence of Cuban privateers when it was pressing the Alabama claims. To the second existed the obstacle that Cuban belligerency had not been recognized, and it was impossible to excite the spirit of gain to engage in any enterprises the object of which was to run a blockade. The third had for its obstacle that all the European and some American houses disposed to enter upon its negotiations imposed, as a *sine qua non* condition, the previous recognition of Cuban belligerency by the United States. Consequently, the main object of all our diplomatic efforts has been during a certain time to bring about such recognition.

This statement, and various other well-known circumstances, place beyond all question the fact that the insurrection has received life and material assistance from the United States, which have served as its treasury, its arsenal, and as a base for its naval operations. Had it not been for these illicit aids and hopes it would long since have ceased to exist and to jeopardize the traditional relations of peace and friendship of two powerful nations.

With regard to many of the expeditions which have been conveyed, as already remarked, from the United States to Cuba, either the legation or the consular officers of Spain have given timely and special notice to the Department of State or to the local authorities of this Government, and it must be admitted that in the case of the Catharine Whiting the authorities of New York acted with energy and efficiency. It was unfortunate that the powers conferred by the President upon these authorities on the 13th of July, 1869, were withdrawn from them, as is stated by District Attorney Barlow in his aforesaid communication to Attorney-General Hoar, which bears date of October 1, 1869. But, even if this had not occurred, and if the diplomatic and consular agents of Spain had not given ample notice of what was going on, as was done by Mr. Lopez Roberts in his communication of April 5, 1869, and others of subsequent date, the responsibility of this Government would have been the same. In the argument presented by the United States to the Geneva tribunal, the following is laid down as a principle of international law in relation to vessels which eluded the vigilance of the English authorities:

That they were not complained of or discovered by the minister of the United States does not relieve Great Britain of its duty of due diligence to discover them and to prevent their escape. The duty would have existed if misfortune had deprived the United States of such a representative, or if broken diplomatic relations had removed him from the kingdom.

What a commentary, moreover, upon the failure of the Washington Government to issue a proclamation, are the words which were uttered at Geneva, whereby it was said that England had issued no proclamation, or circular-letters, in order to cause the proper officers to realize "any duty of vigilance to detect, of promptitude to declare, of activity to discourage the illegal outfit or dispatch of vessels in violation of international duty toward the United States!"

It is true that, early in 1870, with a view to facilitating such judicial proceedings as might be commenced, and also in order to afford the utmost dispatch in the courts when it might be necessary, the Secretary of State indicated to the legation of Spain the propriety of informing its consuls that they would be allowed to present directly to the competent authorities of the United States "any *legal* proof that they might have obtained concerning an infraction of the laws." In consequence of this indication, the consular agents of Spain addressed communications relative to the *Hornet* to the said authorities on the 8th of December, 1870, and subsequently to the district attorney, Mr. Bliss. The district attorneys, however, in all cases replied that they had no power to take preventive measures in the absence of such legal proof as would render conviction certain. It is not necessary to say that it is very difficult for the consuls of Spain in this country to procure such proof in this country. It is in the very essence of political sovereignty, that while Spain has the widest latitude of political power within her own territory, she has none in the United States. Any legal action on her part is null and void here, since it lacks the legal authority which alone could render it effective, and because Spain has no control either over

the officers of justice or over the means which are required in order to discover a crime and to furnish legal evidence of its commission. She is not able to compel witnesses to appear and answer questions, and if, from time to time, a witness appears who is ready to tell the truth, Spain has no power to detain him while awaiting the pleasure or the convenience of a district attorney in cases in which it is necessary to bring the matter before the courts. If, then, a witness absents himself, or gives ear to the emissaries of the parties accused, the consuls of Spain find themselves exposed to unjust animadversion, while they cannot defend themselves, with due regard for their own decorum, either in the courts or elsewhere. The difficulties and inconveniences which are experienced by diplomatic and consular agents in discovering and furnishing evidence of crimes against a foreign jurisdiction within such jurisdiction, under established judicial and administrative systems, could not be better set forth than they are in a note addressed to Mr. Seward by Mr. Adams, under date of February 9, 1865, at which time the latter was minister of the United States in England.

The undersigned deems it unnecessary for him to add that it is not his intention to criticise the courts of the United States. In the foregoing remarks he has only desired to allude to the failure on the part of the authorities to take any initiative steps, and, being aware that the courts of justice established for the punishment of crimes against the state only act when a case is brought before them by the state, he complains that the state did not take measures for the prosecution and punishment of the sympathizers with the Cuban insurrection, seeing that, owing to the lack of such measures, certain acts which, in their inception, only constituted misdemeanors of individuals against the state, grew into an offense of the state against Spain, for which the latter is entitled to ask reparation.

After having referred to acts of this nature, and to the circumstances under which they were committed, the undersigned desires to call the attention of the honorable Secretary of State to the true definition of the duties and obligations of the United States, in the light of which these acts should be judged. The undersigned is very far from desiring to diminish or curtail the right of asylum for political offenses. The wisdom of the general principle which denies ex-territorial jurisdiction to criminal laws is acknowledged by all, and the undersigned is not unaware that the treaties concluded for the extradition of fugitives from justice, even on account of grave offenses not of a political character, are comparatively modern. The undersigned is also aware that the United States, like other countries, act under a laudable impulse of humanity in offering a refuge and asylum to those whom revolution, civil war, or political proscription have cast upon their shores. He would certainly not wish to see any impairment of the civil and individual liberty, of the freedom of speech and of the press, or of the security against illegal arrest or prolonged detention of person or property which the institutions of the great republic guarantee to all its inhabitants. These benefits of asylum, however, in favor of political refugees, as they have certain rights and privileges, likewise have corresponding duties and obligations, both as regards those to whom they are granted and the nation which grants them. An asylum signifies security to one fleeing from pursuit, but not a means of molesting his pursuers with impunity, or of converting his place of refuge into an arsenal and fortress from which to attack them. No state should permit a number of political emigrants to abuse the protection of its soil so as to attack with impunity, or in any manner to molest, the government

under whose laws they live, or the one whose jurisdiction they have abandoned. The United States should not, therefore, permit Cubans who have taken refuge on their soil, either on account of political or other offenses, to use their territory to establish and maintain an administrative center, such as the Cuban junta in New York, through whose instrumentality hostile expeditions have been, and still continue to be, sent against the possessions of Spain; and it must be observed that the permission of tolerance granted to the Cuban refugees, in the use which they have made and still make of the territory of the United States, is not only a want of friendship and neutrality, but that it might even be characterized as a really hostile act.

The undersigned will not weary the honorable Secretary of State with numerous quotations or the allegation of numerous antecedents in support of these principles of international law. One or two will suffice. It is an established maxim of British jurisprudence that by the common law of England the law of nations is recognized as forming a part of that jurisprudence, and numerous cases are on record in that country in which the principle has been established that a libelous article, written against a foreign sovereign or government, subjects its author to the penalty provided for libel. In the case of Peltier, a royalist, prosecuted in England for slander of the First Consul during the peace of Amiens, Chief-Justice Ellenborough explained the law to the jury in the following terms, as will be seen by reference to Howell's State Trials, vol. 28, page 230 : (236 f)

I lay it down as law that any publication which tends to degrade, revile, and defame persons in considerable situations of power and dignity in foreign countries may be taken to be and treated as a libel, and particularly when it has a tendency to interrupt the pacific relations between the two countries. If the publication contains a plain and manifest incitement and persuasion, addressed to others, to assassinate and destroy the persons of such magistrates, the tendency of such a publication is to interrupt the harmony subsisting between the two countries, the libel assumes a still more criminal complexion.

The principle above enunciated never went, in England, as the undersigned believes, as regards its application, beyond what is provided for cases of libel; but its general application, as a principle of international law, has been solemnly advocated on other occasions, as is shown by a speech delivered by Lord Lyndhurst in the House of Lords, March 4, 1853, in which he said :

I will first take the case of British subjects. If a number of British subjects were to combine and conspire together to excite revolt among the inhabitants of a friendly state—of a state united in alliance with us—and these persons, in pursuance of that conspiracy, were to issue manifestoes and proclamations for the purpose of carrying that object into effect; above all, if they were to subscribe money for the purpose of purchasing arms to give effect to that intended enterprise, I conceive, and I state with confidence, that such persons would be guilty of a misdemeanor, and liable to suffer punishment by the laws of this country, inasmuch as their conduct would tend to embroil the two countries together, to lead to remonstrances by the one with the other, and ultimately it might lead to war. I think my noble and learned friends who are now assembled here, and who perform so important a part in the deliberations of this house, will not dissent from the opinion I state with respect to British subjects. Now, with respect to foreigners. Foreigners residing in this country, as long as they reside here under the protection of this country, are considered in the light of British subjects or rather subjects of Her Majesty, and are punishable by the criminal law precisely in the same manner, to the same extent, and under the same conditions as natural-born subjects of Her Majesty. In cases of this kind, persons coming here as refugees from a foreign state, in consequence of political acts which they have committed, are bound by every principle of gratitude to conduct themselves with propriety. This circumstance tends greatly to aggravate their offense, and no one can doubt that they are liable to severe punishment. I will put the case in another shape. The offense of endeavoring to excite revolt against a neighboring state is an offense against the law of nations. No writer on the law of nations states otherwise. But the law of nations, according to the decision of our greatest judges, is part of the law of England.

The doctrine of jurisprudence was subsequently confirmed by Lord Brougham, Lord Truro, and Lord Chancellor Cranworth. Phillimore, in his valuable treatise on international law, expresses himself in the same sense, as follows :

International law considers the right of self-preservation as pair and paramount to that of territorial inviolability, and, where they conflict, justifies the maintenance of the former at the expense of the latter right. The case of conflict, indeed, must be indisputable; such a case, however, is quite conceivable. A rebellion or a civil commotion, it may happen, agitates a nation; while the authorities are engaged in repressing it bands of rebels pass the frontier, shelter themselves under the protection of the contemninous state, and from thence, with restored strength and fresh appliances, renew their invasions upon the state from which they have escaped. The invaded state remonstrates. The remonstrance, whether from favor to the rebels or feebleness of the executive, is unheeded, or, at least, the evil complained of remains unredressed. In this state of things, the invaded state is warranted by international law in crossing the frontier and in taking the necessary means for her safety, whether these be the capture or dispersion of the rebels or the destruction of their strongholds, as the exigencies of the case may fairly require. In all cases where the territory of one nation is invaded from the country of another, whether the invading force be composed of the refugees of the country invaded or of subjects of the other country, or both, the government of the invaded country has a right to be satisfied that the country from which the invasion has come has neither by sufferance nor reception openly aided or abetted it.

Lord Palmerston, in a diplomatic note addressed to Lord Ponsonby, under date of October 6, 1849, adheres to the principle that a state ought not to allow emigrants the use of its territory in order to carry on hostilities against the government from whose jurisdiction they have fled. He says :

The Sultan has duties of good neighborhood to fulfill toward Austria, and those duties require that he should not permit his territory to be made use of as a place of shelter, from which communication should be carried on for the purpose of disturbing the tranquillity of any of the states which compose the Austrian Empire. The Sultan is, therefore, bound to prevent these Hungarian refugees from hovering upon the frontier of Hungary or Transylvania, and he ought to require them either to leave the Turkish territory or to take up their residence in some part of the interior of his dominions, where they may have no means of communicating with the discontented in the Austrian states.

In violation of these precepts and examples of the duties owed to each other by countries which are bound by the ties of peace and friendship, when intestine disturbances unfortunately exist in one of them, the Cuban refugees in New York have, during the past four years, more than once succeeded in causing the United States to fail to perform the aforesaid duty. This is principally true in the case of the *Virginus* during the time which elapsed between the month of October, 1870, and that of November, 1873, in which Spain and her subjects on the island of Cuba have suffered serious detriment by reason of the acts of the said vessel. No small number of those engaged in the ill-fated expedition which was frustrated by the *Tornado* were recruited in New York for the purpose of invading the island of Cuba, and sailed for their destination in October last on board of the steamer *Atlas*.

The accompanying statement, made before the consul-general of Spain at New York by a person who took part in the aforesaid expedition, may not be altogether unworthy of credit; and, in addition to what is therein expressed, there is ground for the belief that other evidence might be procured to the effect that upward of forty of the persons who were on board of the *Virginus* were collected in New York, and sailed from that port by the steamer *Atlas*. The names of these persons do not appear in the list of passengers of the aforesaid steamer, but there is no doubt that there were nearly one hundred persons on board of her who had been previously organized and drilled in the port of departure.

The undersigned believes that, before the sailing of the expedition which was conveyed by the steamers Atlas and Virginius, the district attorney "had sufficient reason" to believe that it was on foot, however true it may be that the consul-general of Spain at New York was unable, at that time, to furnish legal proof sufficient to bring to trial the parties implicated, who had been made known to him, as had also their places of meeting.

In the view of these facts and of all the circumstances, which he has frankly and fully stated in the interest of the long-continued friendship and good understanding between Spain and the United States, the undersigned confidently hopes that the Government of the United States will recognize the right of Spain and her subjects to ask reparation for the injury which has been caused in the past by the acts of the Virginius, and security and guarantees for the future that the agents of the Cuban insurrection will not be permitted to use the territory of this nation, as they have done during the last four years, for the organization and fitting out of hostile expeditions against Spain.

The undersigned avails himself of this occasion to reiterate to the honorable Secretary of State the assurances of his most distinguished consideration.

JOSE POLO DE BERNABÉ.

The Hon. SECRETARY OF STATE  
*Of the United States.*

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No: 556.

*Mr. Fish to Admiral Polo de Bernabé.*

DEPARTMENT OF STATE,  
Washington, April 18, 1874.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the reception of the note of 2d of February last, which his excellency Admiral Polo de Bernabé, the envoy extraordinary and minister plenipotentiary of Spain, addressed to him respecting the Virginius, and the assumed relations of the United States toward the insurrection in Cuba.

The pressure of business incident to the session of Congress and a severe indisposition have prevented an earlier reply to that note.

The undersigned has observed with regret in Admiral Polo's note harsh expressions and unwarranted criticisms upon the official conduct of officers of the United States, which he feels confident would not have obtained admission to the paper had they attracted the attention of the accomplished minister of Spain, whose sense of justice would not allow him to give expression to what his sensitiveness and regard for the proprieties of diplomatic correspondence would not permit him calmly to accept.

The undersigned finds in the historical part of Admiral Polo's note many misapprehensions of facts (as the facts are understood by this Government) and many errors of omission which need to be corrected before entering upon the particular argument respecting the Virginius. The undersigned will endeavor to do this as briefly as possible.

The insurrection which broke out at Yara, in the autumn of 1868, has had the unusual good fortune of having the justice of the complaints,

which it alleges in its justification, recognized by those who are engaged in suppressing it. On the 10th of September, 1869, the minister of transmarine affairs at Madrid, in an official paper, said :

A deplorable and pertinacious tradition of despotism, which, if it could ever be justified, is without a shadow of reason at the present time, intrusted the direction and management of our colonial establishment to the agents of the metropolis, destroying, by their dominant and exclusive authority, the vital energies of the country, and the creative and productive activity of free individuals. And although the system may now have improved in some of its details, the domineering action of the authorities being less felt, it still appears full of the original error, which is upheld by the force of tradition, and the necessary influence of interests created under their protection, which, doubtless, are deserving of respect so far as they are reconcilable with the requirements of justice, with the common welfare, and with the principles on which every liberal system should be founded. A change of system, political as well as administrative, is therefore imperatively demanded.

But while admitting the existence of the injuries which had provoked the outbreak at Yara, the government of the revolution of 1868 refused to remedy them until the armed insurrection should be suppressed. "Spain would already have given all constitutional liberties to Cuba," said Mr. Silvela to General Sickles, "if the unfortunate insurrection of Yara and the cry of 'Death to Spain,' uttered by some Cubans, had not alienated the sympathies of the nation, and obliged the government to accept the impolitic contest to which it was provoked. The government considers that it can come to no definite decision in regard to the political situation and future government of the island of Cuba until the insurgents lay down their arms and cease the struggle." This would indicate that it is the resistance to admitted wrongs, and not the wrongfulness of resistance, which Spain is endeavoring to repress.

One of the two great questions at issue between the insurgents and the authorities of Spain was understood to be the future condition of the African race in the island. The insurgents, as early as the 26th of February, 1869, decreed the abolition of slavery "in the name of liberty and the people." This act met with no response from Spain. The eloquent Mr. Castellar, when a member of the Cortes, without the responsibilities of government, said :

I am an advocate of abolition in Cuba, with a due regard to all interests. I am an advocate of colonial reforms, and of every possible liberty to Cuba and Porto Rico.

But when, in the turn of events, he attained to power, he was unable to do anything for Cuba, and retired with slavery untouched, and with reforms still a dream.

It cannot be a matter for wonder that persons in other lands sympathized with the great and liberal statesmen of Spain in their convictions that a large measure of reform was needed in Cuba, and held that one of the greatest of all was the abolition of slavery. And perhaps less surprise will be manifested that such sympathizers in other lands could not comprehend why such distinguished statesmen should insist upon subjugating the Cubans, who had taken up arms to resist oppression, before consenting to relieve them from the wrongs which they were admitted to be enduring.

It must be frankly confessed that there were many persons in the United States who shared the theoretical opinions of the Spanish statesmen, but who could not agree in the diametrically opposite policy which Spain pursued toward Cuba under their directions.

It was natural for the people of the United States to feel an interest in the prosperity of Cuba. This and the reasons for it were well understood at Madrid. Mr. Martos, in the presence of his colleagues, Mr. Becerra and Mr. Rivero, had officially spoken to General Sickles of



"the common interests shared by the United States and Spain in Cuba." He said "that whatever retarded the prosperity of the island was injurious alike to both countries; that the welfare of Cuba was of more commercial importance to the United States than to the mother country."

This wise statesman might have added that the interest of the United States in Cuba was heightened by a desire that the deadly struggle on the island might end in the acquisition of self-government (whether under, or free from, Spanish rule was of course immaterial to an American) and in the abolition of slavery. Such was undoubtedly the fact. The undersigned feels convinced that these views were shared by the mass of the liberal statesmen of Spain, modified, probably, by the patriotic wish that the island should retain its political connection with Spain. But it could not be expected that foreigners would share in the full warmth of this wish of Spanish statesmen. The mass of the people of the United States certainly gave little heed to the matter beyond the natural preference that a disturbing element of European politics should be removed from the American system.

In the rapid progress of events, however, they, in common with the rest of the civilized world, were soon forced to give attention to Cuban affairs. The authorities in that island began to exercise rights of war in time of peace, and to trample out liberties which their superiors at Madrid desired to maintain and extend.

Admiral Polo expresses the opinion that the insurrection "did not find extensive sympathies in the island of Cuba," and that "it was but a little while before its locality was limited to the eastern part of the island.

Such was not the tenor of the information received at this Department.

It is now more than five years since the uprising, and it has been announced, with apparent authority, that Spain has lost upward of eighty thousand men, and has expended upward of one hundred millions of dollars, in efforts to suppress it; yet the insurrection seems to-day as active and as powerful as it has ever been. And the suggestion that its locality was limited to the eastern part of the island leads one to inquire whether Villa Clara and the other of the cinco villas, and the railway between Nuevitas and Puerto Principe, are in that district.

Indeed, until the receipt of Admiral Polo's note, the undersigned had supposed that the extent of the disaffection in Cuba was urged as an extenuating motive for the remarkable series of measures which the undersigned will soon notice.

Soon after the outbreak of the insurrection, this Government, of its own accord, without being thereto moved by the representative of Spain, caused inquiries to be made respecting "rumors of a projected expedition against Cuba" from New York, with a view, should circumstances require it, to the issue of such instructions as might be necessary for "the defeat of the schemes in question." The officer charged with the inquiry answered that he had made a thorough investigation, and added:

It is true that a number of well-known filibusters have opened an office at 498 Broome street, in this city, (New York,) for the ostensible purpose of enlisting men for the invasion of the island of Cuba, but really with a view of making money out of the resident Cubans in this city who sympathize with the cause. *But I am happy to inform you that thus far they have been unsuccessful.*

This fact, which exhibits the anxiety of this Government to perform its international duties, is apparently referred to by Admiral Polo with

a purpose of showing a want of diligence on its part in that respect; since, in quoting the report of the officer, the passage which is *underscored* is omitted.

On the 24th of March, 1869, the captain-general of Cuba issued a decree, which is referred to by Admiral Polo, and from which the following is an extract:

Vessels which may be captured in Spanish waters, or on the high seas near to the island, having on board men, arms, and munitions, or effects that can in any manner contribute, promote, or foment the insurrection in this province, whatsoever their derivation and destination, after examination of their papers and register, shall be *de facto* considered as enemies of the integrity of our territory, and treated as pirates, in accordance with the ordinances of the navy.

All persons captured in such vessels, without regard to their number, will be immediately executed.

A copy of this decree was received at this Department on the 2d of April, 1869, and the undersigned, although but then just entered upon the duties of his office, and greatly pressed with other public matters requiring immediate attention, put everything aside, by direction of the President, and on the next day wrote as follows to the minister of Spain at Washington:

It is to be regretted that so high a functionary as the captain-general of Cuba should, as this paper seems to indicate, have overlooked the obligations of his government pursuant to the law of nations, and especially its promises in the treaty between the United States and Spain of 1795.

Under that law and treaty the United States expect for their citizens and vessels the privilege of carrying to the enemies of Spain, whether those enemies be claimed as Spanish subjects or citizens of other countries, subject only to the requirements of a legal blockade, all merchandise not contraband of war. Articles contraband of war, when destined for the enemies of Spain, are liable to seizure on the high seas, but the right of seizure is limited to such articles only, and no claim for its extension to other merchandise, or to persons not in the civil, military, or naval service of the enemies of Spain, will be acquiesced in by the United States.

This Government certainly cannot assent to the punishment by Spanish authorities of any citizen of the United States for the exercise of a privilege to which he may be entitled under public law and treaties.

It is consequently hoped that his excellency the captain-general of Cuba will either recall the proclamation referred to, or will give such instructions to the proper officers as will prevent its illegal application to citizens of the United States or their property. A contrary course might endanger those friendly and cordial relations between the two governments which it is the hearty desire of the President should be maintained.

The order to indiscriminately slaughter "all persons captured in such vessels, without regard to their number," could not but shock the sensibilities of all humane persons. The undersigned felt, however, unwilling to object to the execution of the order, except when proposed to be enforced against citizens of the United States.

Almost simultaneously with the receipt of this startling news, Mr. Lopez Roberts, on April 5, 1869, made of the undersigned the request referred to by Admiral Polo, that the President should issue a proclamation to restrain military expeditions against Cuba, accompanying the request with allegations "that piratical expeditions are in preparation against the legitimate government of Spain in Cuba," and that "arms and ammunition are sent there in sailing-vessels and steamers."

In regard to the second point thus stated by Admiral Polo's esteemed predecessor, the undersigned was constrained by a due regard to universally recognized principles of international rights and duties to declare, that in the absence of a recognized state of war, it was no offense in the sailing-vessels and steamers of the United States to carry arms and ammunitions of war for whomsoever it might concern. The undersigned has uniformly said that no government can by the law of nations

be held responsible for shipments of arms, munitions, or materials of war, made by private individuals at their own risk and peril. If a state of war should exist, if Spain should be entitled to the rights of a belligerent, parties concerned in the shipment of arms and military supplies for her enemy would incur the risk of confiscation by her of their goods; but their act would involve no ground of reclamation against their government in behalf of Spain; and consequently no right to invoke the aid of that government in preventing the perpetration of the act. Such it is believed is the established law of nations, and such the received rule even when the shipment of arms and munitions is made from the territory of the country whose citizens may be the parties engaged in the introduction of these supplies for the use of one of the belligerents.

In regard to the first point thus taken by Mr. Lopez Roberts, the undersigned could not but observe that the allegations respecting alleged piratical expeditions were not only wholly unsupported by proof, but were in themselves extremely improbable.

It is quite competent for a state to apply the term of "piracy" by its municipal acts to any offenses, however trivial, and to affix to them punishments it may deem appropriate. But in thus applying the title of a crime known to international law to offenses created by municipal law, it cannot invoke upon the latter penalties which international law denounces against the crimes which the nations of the world recognize as "piracy."

Within its own territorial jurisdiction the application of terms and of epithets, or even the denunciation of punishments, except so far as they may offend humanity or the civilization of the age, might not be objected to; and the undersigned does not at present feel called upon to deny that the penalties thus denounced may be enforced (without right or question by other powers) upon those who may commit the acts to which these terms are applied, within the territory of the state enacting the municipal law. But it would be inappropriate to apply either such definitions of crime or penalties to matters occurring without its territorial jurisdiction, or in discussions with other powers.

Piracy, as an offense against the unwritten but universally recognized law of nations, has been made the subject of many definitions. The definition by Wheaton, as explained by his commentator Dana, would probably be recognized by the courts of all civilized powers.

Wheaton defines this crime "to be the offense of depredating on the seas without being authorized by any sovereign state, or with commission from different sovereigns at war with each other;" and Dana, in his note upon this definition, says, "to constitute piracy *jure gentium*, it is necessary, first, that the offense be adequate in degree—for instance, robbery, destruction by fire, or other injury to persons or property—must be committed on the high seas and not within the territorial jurisdiction of any nation; and, second, that the offenders, at the time of the commission of the act, should be in fact free from lawful authority, or should have made themselves so by their deed, or, as Sir L. Jenkins says, 'out of the protection of all laws and privileges;' or, in the words of the Duc de Broglie, 'quin'a ni feu ni lieu;' in short, they must be in the predicament of outlaws."

It did not appear to the undersigned from any evidence that was laid before him at that time by Mr. Lopez Roberts, or from any other source, that any parties were undertaking or contemplating military expeditions from the United States against Cuba, or were proposing to make any "piratical expeditions."

The undersigned therefore felt constrained to reply, on the 17th of the same April, in the following language :

After a careful examination of Mr. Roberts's note, the undersigned fails to perceive the necessity, or the propriety at this time, of a proclamation by the President of the United States such as Mr. Roberts desires.

The publication of an instrument of the character asked by Mr. Roberts would be the exercise of a power by the President which is resorted to only on extraordinary occasions, and when peculiar circumstances indicate its necessity. Such a power is not to be invoked lightly, or when the laws are in unquestioned vigor and efficiency, are respected by all persons, and are enforced by the ordinary agencies.

At present this Government is not aware of any invasion of the island of Cuba, or of any other possessions of Spain threatened from the United States, nor is any such believed to be in the course of preparation. Mr. Roberts has, on several occasions, intimated to the undersigned the existence of individual or private attempts in different parts of the country to violate the neutrality laws of the United States. In every such instance, as Mr. Roberts very justly admits in his note, the proper officers of the Government have been called upon immediately to vindicate the supremacy of the law, and no single instance is known or is believed to have arisen in which their interference, thus invoked, has not been efficient to prevent the apprehended violation.

The justice of these views of the undersigned on the 17th of April, 1869, have been amply vindicated by subsequent events.

Instead of resorting to the exceptionable and uncertain measure of a proclamation, this Government availed itself of the agency of special and peremptory instructions to executive officers, and by this means succeeded in preventing the formation of military expeditions in every case referred to by Admiral Polo, except in the case of the Catharine Whiting, and in that case it entirely broke up the proposed expedition by the use of force.

The objectionable decree of the 24th of March was soon followed by a proclamation of Count Valmaseda still more abhorrent to the sense of the civilized world. By this proclamation, made at Bayamo on the 4th of April, 1869, which reached the Department of State on the 9th of May, the following announcement was made to Cubans who believed with Mr. Castelar, General Prim, Mr. Becerra, Mr. Silvela, Mr. Martos, Mr. Rivera, and other Spanish statesmen, that Cuba was suffering under oppression and wrong which ought to be remedied :

1st. Every man, from the age of fifteen years upward, found away from his habitation, (*finca*), and does not prove a justified motive therefor, will be shot.

2d. Every habitation unoccupied will be burned by the troops.

3d. Every habitation from which does not float a white flag, as a signal that its occupants desire peace, will be reduced to ashes.

Women that are not living at their own homes, or at the house of their relatives, will collect in the town of Jiguani, or Bayamo, where maintenance will be provided. Those who do not present themselves will be conducted forcibly.

The courses of trade and of social intercourse had carried many citizens of the United States into Cuba. When, therefore, this proclamation reached the undersigned, the President thought it right toward Spain that, although scarcely crediting the genuineness of the document, the undersigned should send the following notice to Mr. Lopez Roberts :

In the interest of Christian civilization and common humanity, I hope that this document is a forgery. If it be indeed genuine, the President instructs me, in the most forcible manner, to protest against such a mode of warfare, and to ask you to request the Spanish authorities in Cuba to take such steps that no person having the right to claim the protection of the Government of the United States shall be sacrificed or injured in the conduct of hostilities upon this basis.

Admiral Polo now attempts to defend these orders by saying that—

Such rigorous measures are not confined exclusively to Spain ; that the code of instruction for armies in the field published by the War Department of the United States during the civil war which terminated in 1865 authorized the destruction of every

kind of property belonging to the enemy, and the penalty of death on every one who, in a section of territory occupied or subjected by one of the Federal armies, attempted to resist said army or the authorities which it had established.

The United States were in a state of war when the orders referred to were issued. Spain had not been slow in forcing upon them in the very incipency of the rebellion her recognition of a state of war. She does not now recognize that she is herself at war, but appeals, as a precedent for her conduct, to rules prescribed for armies in the field. If she claims the rights, it is but logical that she accept the consequences of a state of war.

The instructions for the government of armies of the United States in the field, referred to by Admiral Polo, were promulgated on the 24th of April, 1863. The undersigned takes the liberty of quoting several passages from them, which sufficiently illustrate the humane and Christian spirit which pervades them—a spirit characterized by Dr. Bluntschli as “en corrélation avec les idées actuelles de l’humanité et la manière de faire la guerre chez les peuples civilisés.”

Martial law is simply military authority exercised in accordance with the laws and usages of war. Military oppression is not martial law; it is the abuse of the power which that law confers. As martial law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor, and humanity, virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed.

Military necessity admits of all *direct* destruction of life or limb of *armed* enemies, and of other persons whose destruction is incidentally *unavoidable* in the armed contests of the war.

Nevertheless, as civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself with its men in arms. The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of the war will admit.

The United States acknowledge and protect, in hostile countries occupied by them, religion and morality; strictly private property; the persons of the inhabitants, especially those of women, and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.

Modern wars are not internecine wars, in which the killing of the enemy is the object. The destruction of the enemy in modern war, and indeed modern war itself, means to obtain that object of the belligerent which lies beyond the war. Unnecessary and revengeful destruction of life is unlawful.

The undersigned is confident that Admiral Polo will feel a sincere pleasure in thus knowing that his information respecting these instructions has been incorrect. Even had it been correct, the accomplished and generous minister from Spain and the undersigned would alike feel unwilling to contend that two wrongs could make a right.

Even in such case, however, it would be remembered that a worthy precedent might be found in the practice of the United States during a rebellion of the most mighty proportions, pending which not a prisoner was killed in cold blood; not a political crime, however grave, was visited with capital punishment. The soil of the United States remains to this day unstained by the first drop of blood taken from a political offender. Had this example been followed wherever a political insurrection has arisen, many might now be living whose blood cries aloud against the cruelty of some rulers. Christendom generally applauds the example of clemency and of generosity which the United States thus exhibited.

The same spirit of generous regard for life, and forgiveness, marks the policy of the United States in other respects, and makes their penal codes look to the prevention more than to the punishment of crime, and often withholds the enforcement of penalties when the danger against

which they are denounced is supposed to have passed. It is with much regret that it is seen from the correspondence with the representatives of Spain for the past five years, and from the frequent complaints (in the note of Admiral Polo, now acknowledged) of the omission of the United States to enforce penalties and inflict punishment, that Spain does not sympathize with the policy of clemency and forgiveness, and seems to regard punishment as the test of the sincerity with which crime is denounced, and as the sole means of preventing at least political offenses. The examples of the condition of the two countries must be the criterion to determine the comparative merits of the antagonist systems.

Prior to this time, (namely, on the 12th of February, 1869,) a decree with an explanatory statement had been issued by the captain-general, taking from the jurisdiction of the ordinary courts a large class of crimes, and forcing American citizens charged with such crimes to be tried before a court-martial, in violation of the provisions of the treaty of 1795. When it is remembered that this decree was issued about the time when it was officially announced to the undersigned that "the rebels have no communication with each other, they occupy no place as a center of operations, nor have they in the whole island a single city, a single town, a single village or hamlet, nor even a point on the coast where they might collect their forces, and date their orders and proclamations," Admiral Polo will comprehend the magnitude of this assault upon the rights secured to citizens of the United States by the treaty of 1795.

The English translation of the text of this decree is as follows :

In use of the extraordinary faculties with which the provisional government of the nation has invested me, I decree the following :

ARTICLE 1. Crimes of *infidencia* shall be tried by ordinary court-martial.

ART. 2. Prosecutions already commenced shall follow the legal process prescribed by the laws for the tribunals of justice.

ART. 3. All aggressions, by act or by word, against any of the delegates of the government, shall be considered as a crime against the authority, and will subject its author to trial by court-martial.

DOMINGO DULCE.

HAVANA, *February 12, 1869.*

SUPERIOR POLITICAL GOVERNMENT OF THE EVER-FAITHFUL ISLAND OF CUBA—OFFICE OF THE SECRETARY.

For the better understanding of the decree published yesterday, (the 12th of February,) it is made known that under the word *infidencia*, which is made use of in article 1, are understood the following crimes: treason, or *lesa nacion*, rebellion, insurrection, conspiracy, sedition, harboring of rebels and criminals, intelligence with the enemy, meetings of journeymen or laborers and leagues; expressions, cries, or voices subversive or seditious; propagation of alarming news; manifestations, allegations, and all that, with a political end, tends to disturb public tranquillity and order, or that in any mode attacks the national integrity,

It is also made known that robbery in uninhabited districts, whatever may be the number of the robbers, and in populated districts, if the number of the robbers be more than three, shall be tried by court-martial, as also the bearers of prohibited arms. And by order of his excellency the superior political governor, the same is published in the *Gazette*, for the general knowledge.

On the 15th of April, 1869, the same policy which had prompted the authorities in Cuba to deprive citizens of the United States of personal rights guaranteed to them by treaty, led to a decree of embargoes of property, which, so far as it applied to the properties of citizens of the United States, was also in direct violation of the rights secured by the treaty of 1795. The publication of this decree was followed by the publication of another decree, (made on the 1st day of April,) interfering with the free alienation of property on the island. And two days later

another decree was published, creating an administrative council to take charge of the embargoed estates. Under the operation of these several decrees a vast amount of the property of citizens of the United States is understood to have (illegally, and in violation of law and right) come into the possession of subjects of Spain, without having yet been accounted for or refunded.

When these decrees came to the knowledge of the undersigned, he addressed the following communication to the predecessor of Admiral Polo, under date of April 30, 1869 :

I am instructed by the President to inform you that this department has received from the United States consulate in Cuba a decree dated the first day of April current, and promulgated by the captain-general of the island on the 15th of this month, which virtually forbids the alienation of property in the island, except with the revision and assent of certain officials named in the decree, and which declares null and void all sales made without such revision and assent.

In view of the intimate commercial relations between Cuba and the United States, and of the great amount of American property constantly invested there in commercial ventures, as well as in a more permanent form, the President views with regret such sweeping interference with the rights of individuals to alienate or dispose of their property, and he hopes that steps may be speedily taken to modify this decree so that it shall not be applicable to the property of citizens of the United States, and thus prevent disputes and complaints that cannot fail to arise if its execution is attempted as to such property.

It is with regret that the undersigned finds himself unable to accept the declaration in Admiral Polo's note made in connection with the seizure of private estates, and the transfers of private property, that it was not without waiting for manifestations of disloyal sentiments and purposes that the decrees were made respecting the sales and embargoes. The undersigned is of opinion that a recurrence to the correspondence which he has had the honor to conduct with the Spanish legation in this capital, and through the legation of this government at Madrid, will recall many instances of interference with the private rights and property of citizens of the United States, who have had no connection with the insurrectionary movements in Cuba, and many where Spain has practically admitted the precipitancy of her officers in their haste to lay hands on private property, and has in many instances promised, and in a very few instances has granted, the restoration of property thus unlawfully seized. And in this connection the undersigned must be permitted to express the regret with which he observes the introduction into a diplomatic note of the cases of "eminent banking and commercial houses of New York and other places," which, by agreement between the two governments, have been referred for adjudication to an international commission, and the prejudgment and denunciation of these eminent houses as having "lent their names to a false pretext."

On the 7th of July, 1869, the captain-general of Cuba decreed :

ARTICLE 1. There shall continue closed to import and export trade, as well for vessels in foreign commerce as also those in the coasting trade, all the ports situated from Cayo Bahía de Cadiz to Punta Mayo, on the north, and from Punta Mayo to Cienfuegos, on the south, with the exception of those of Sagua la Grande, Caibarien, Nuevitas, Gibara, Baracoa, Guanatanamo, Santiago de Cuba, Manzanillo, Santa Cruz, Zaza, Casilda, or Trinidad, and Cienfuegos, in which there are established custom-houses or collection-offices.

Those who attempt to enter the closed ports or to hold communication with the coast shall be pursued, and, on being apprehended, prosecuted as infractors of the laws.

ART. 2. In accordance with the same, there shall also be prosecuted vessels carrying powder, arms, or military supplies.

ART. 3. The transportation of individuals for the services of the insurrection is much more grave than that of contraband, and will be considered as an act decidedly hostile, being proceeded against in such case as an enemy, the vessel and its crew.

ART. 4. If the individuals to which the preceding article refers come armed, they

will afford proof in fact of their intentions, and will be tried as pirates the same as the crew of the vessel.

ART. 5. There shall also be held to be pirates, in conformity with law, vessels which may be seized bearing a flag not recognized, whether the same be armed or not as vessels of war.

ART. 6. On the high seas contiguous to those of this island the cruisers shall confine themselves to exercise over such vessels as may be denounced, or those that by their proceedings excite suspicion, the rights stipulated in the treaties signed by Spain with the United States in 1795, with Great Britain in 1835, and with other nations subsequently, and if in the exercise of these rights vessels should be found recognized as enemies of the integrity of the territory, they shall be brought into port for the corresponding legal investigation and trial.

This extraordinary decree caused a profound sensation in the United States, and the undersigned, as soon as it was received, addressed a note of inquiry to the predecessor of Admiral Polo, dated July 16, 1869, the material parts of which he takes the liberty of transcribing, as Admiral Polo seems to be under a misapprehension respecting it :

The decree of the captain-general, De Rodas, assumes powers and rights over the trade and commerce of other peoples inconsistent with a state of peace, and which the United States can be expected to allow their vessels to be subject to only when Spain avows herself to be in a state of war, or shall be manifestly exercising the rights conceded only to belligerents in the time of war.

The first article of the decree proposes to close certain ports, embracing a large extent of the island of Cuba, against the peaceful commerce of foreign countries. Without contesting the right of a government in time of peace to exclude from its ports the trade and commerce of a friendly people, the undersigned assumes that the exercise of this power is to be understood purely as a municipal act, to be executed and enforced wholly within the recognized exclusive jurisdiction of Spain, and only as to ports which are in the possession of the Spanish authorities. In case the success of the insurrectionary party should put any of the ports, declared to be closed, in their possession, the United States, as a maritime nation, will regard an effective blockade to be necessary to the exclusion of their commerce.

The second article of the decree is vague in the absence of the limits within which it proposes to prohibit the carrying of powder, arms, or military supplies.

The transportation on the high seas, in time of peace, of articles commonly known as contraband of war, is a legitimate traffic and commerce which cannot be interfered with or denounced unless by a power at war with a third party in the admitted exercise of the recognized rights of a belligerent. The freedom of the ocean can nowhere and under no circumstances be yielded by the United States. The high seas contiguous to those of the island of Cuba are a direct pathway of a large part of the purely domestic trade of the United States. Their vessels trading between their ports in the Gulf of Mexico and those of the Atlantic coast pass necessarily through these waters. The greater part of the trade between the ports of the United States on the eastern side of the continent and those on the Pacific slope, of necessity pass in sight of the island of Cuba. The United States cannot, then, be indifferent or silent under a decree which, by the vagueness of its terms, may be construed to allow their vessels on the high seas, whatever may be their cargo, to be embarrassed or interfered with. If Spain be at war with Cuba, the United States will submit to those rights which public law concedes to belligerents. But while Spain disclaims a state of belligerency, or until the United States may find it necessary to recognize her as a belligerent, the Government of the United States cannot fail to look with solicitude upon a decree which, if enforced against any vessel of the United States on the high seas, cannot but be regarded as a violation of their rights that may lead to serious complications.

The sixth article of the decree refers to certain rights claimed to be stipulated by the treaty entered into between Spain and the United States in 1795.

The undersigned desires to call the attention of Mr. Roberts and of the government of Spain to the fact that the treaty of 1795 confers upon neither of the contracting parties any rights on the high seas over the vessels of the other in time of peace.

The articles of the treaty of 1795 from I to XI, inclusive, define and regulate the reciprocal relations and obligations of the parties without reference to either party being engaged in war. The portion of the treaty from the XIIth article to the XVIIth contemplates exclusively their relations as neutrals, the duties and powers of each toward the other when one or the other may be engaged in war with a third party. The eighteenth section recognizes and regulates the right of visit or of approaching in time of war, for the inspection of the passport and the identification of the nationality of a vessel of commerce by the vessels of war, or by any privateer of the nation which shall be at war. It confers no right; it limits and prescribes the manner of exercising a belligerent right when such may exist. The clear object and intent of this



provision of the treaty is the avoidance of discussion and annoyance, and the prevention of abuse or indiscretion in the exercise of a belligerent right. Its location in the treaty, the recognition of the right of a privateer (who has no existence except in war) as having the same power and right in the particular referred to with a national vessel of war, and the whole scope and aim of the XVIIIth article of the treaty, established beyond possibility of question that it refers only to the rights which one of the parties may have by reason of being in a state of war.

The treaty authorizes nothing but the inspection of the passport of the vessel of trade met with, while the sixth article of the decree of General de Rodas contemplates a search as to the character of the vessel beyond the limitation fixed by the treaty.

If Spain be engaged in the war it is essential to the rights as well as to the definition of the duties of the people of the United States that they be publicly and authoritatively advised thereof and admonished as to their obligations and liabilities in their new relation with a friendly power. And such admonition admits of no avoidable delay in view of the vast commerce that will thus be subjected to restriction, limitation, and possible detention.

The undersigned, therefore, respectfully desires to be informed by Mr. Roberts, at the earliest practicable moment, whether, in the issuance of this decree, it is to be understood by the United States that Spain recognizes that she is in a state of war and claims the rights of a belligerent.

The undersigned has the honor further to say to Mr. Roberts that the Government of the United States cannot fail to regard the continuance of the decree referred to, or any exercise on the high seas near the island of Cuba, by any vessel of war or privateer of Spain, of the right to visit or board any vessel of the United States, under color of the provisions of the treaty of 1795, as involving the logical conclusion of a recognition by Spain of a state of war with Cuba.

Before concluding, the undersigned begs to call Mr. Roberts's attention to the very grave complication which might ensue from any interference with a vessel of the United States engaged in a lawful voyage, passing near the island of Cuba. The United States maintain the right of their flag to cover and protect their ships on the high seas.

In conclusion, the undersigned expresses the hope that Mr. Roberts will speedily be at liberty to announce the formal abrogation of a decree which causes so much serious apprehension to the Government of the United States, and against which this Government feels bound most earnestly to remonstrate.

In deference, as it was understood, to these views expressed by the undersigned on behalf of this Government, the decree of the captain-general was modified as follows on the 18th of July, 1869 :

In view of the determinations adopted by the Government of the United States of America, as reported by his excellency the minister of Spain in Washington, under date of the 15th instant, and which were published in the Official Gazette of the following day, and in order at the same time to relieve legitimate commerce from all unnecessary interference, in use of the faculties which are conferred upon me by the supreme government of the nation, I have determined to modify my decree of the 7th instant, leaving the same reduced to the first five and essential articles.

In consequence of these severe measures against the persons and properties of Cubans who shared the opinions of the liberal statesmen of Spain respecting the injuries which had been inflicted upon their native country, many fled from the island to the United States. And the undersigned cannot disguise from himself that these Spanish subjects, driven from their native country, have attempted to abuse the hospitality of the United States—that they have tried to make use of their safety here in order to regain what they had lost in Cuba, and that they have been restrained only by the perpetual vigilance and zeal of the officers of the United States. Alas! if the ears of the ministers of A wadeo and of the republic could have been opened to the complaints of their Cuban friends, what crinations might have been spared us!

Admiral Polo, in his review of the vessels which, he says, have taken or attempted to take men and arms from the United States to Cuba, speaks particularly of the Mary Lowell, the Salvador, the Grapeshot, the Catherine Whiting, the Hornet, the Lillian, the Upton, and the Virginus. He also makes reference to the Florida, the Edgar Stuart, the Anna, the Fanny, and the Webster.

The imperfect and in many respects erroneous manner in which Admiral Polo has referred to the vessels which he has named, and his entire neglect to notice the many proofs of the constant vigilance and of the anxious desire of the United States to perform all their international duties to Spain, make it necessary for the undersigned to give a brief review of what was actually done by the United States in respect of these matters.

It may give precision to the review to first define succinctly what the United States understand to have been their duties toward Spain, as a neighbor and as a friend.

The repeated references by Admiral Polo to the doctrines laid down in the course of the discussion at Geneva induce the undersigned to say at the outset, not only that the particular references and citations are from the argument of counsel, which in forensic discussions among all nations is permitted to take a wider latitude of expression than is usual in official or judicial statements, which are supposed to express settled convictions, but also that these discussions at Geneva were predicated upon the admission of a recognized state of war; and that if Spain is prepared to concede that there is a state of war in Cuba, with belligerent rights in each party to the conflict, and shall accede to the three rules set forth in the treaty of Washington, then the United States may be prepared to concede to Spain what they claimed of Great Britain at Geneva, viz, that their duties as a neutral toward Spain as a belligerent will not thereafter be fully performed by simply acting upon information which may be furnished by Spanish agents, without themselves originating any action; that, in the language of their own counter-case at Geneva, "they would not thereby be relieved from the duty of an independent, diligent, and vigilant watchfulness in order to prevent evil-disposed persons from violating their neutrality."

But the undersigned is also constrained to insist that the idea of neutrality in international discussions is inseparable from the idea of a belligerency to which the neutral is not a party; and to repeat that he is unable to comprehend how propositions for the regulation of the conduct of a neutral in a state of war can be pertinently applied to the conduct of one sovereign state toward another friendly sovereign state in time of peace. Thus, when Peru, between whom and Spain a state of war existed, requested the United States to detain a large number of vessels of war, which certain contractors were constructing within the territories of the United States for Spain, it became the duty of the United States to detain the vessels; but, when the assent to their release was given by Peru, it was not regarded by Spain or by the United States as any violation of international duty to permit the vessels to be constructed and delivered and dispatched, notwithstanding the existence of an armed insurrection against Spain in Cuba. Nor can it be claimed that the United States have been guilty of any neglect or want of duty in allowing Spain, on more than one occasion, to make use of their public dock-yards for the reparation of vessels of war.

So far as relates to the past, Spain has never been willing to concede that a state of war exists in Cuba. The rights and duties of the United States toward Spain, therefore, from the commencement of the insurrection, are to be measured by the rights and duties of one nation toward another, in case an insurrection exists which does not rise to the dignity of recognized war.

What one power in such case may not knowingly permit to be done toward another power, without violating its international duties, is de-

fined with sufficient accuracy in the statute of 1818, known as the neutrality law of the United States.

It may not consent to the enlistment within its territorial jurisdiction of naval and military forces intended for the service of the insurrection.

It may not knowingly permit the fitting out and arming or the increasing or augmenting the force of any ship or vessel within its territorial jurisdiction, with intent that such ship or vessel shall be employed in the service of the insurrection.

It may not knowingly permit the setting on foot of military expeditions or enterprises to be carried on from its territory against the power with which the insurrection is contending.

The learned and accomplished minister of Spain, toward the close of his able discussion of this subject, cites the authority of Lord Palmerston to establish that a sovereign power "should not permit its territory to be made use of as a place of shelter, from which communication should be carried on for the purpose of disturbing the tranquillity of the neighboring states."

These duties of good neighborhood were recognized by this Government more than a quarter of a century before Lord Palmerston made the speech referred to by Admiral Polo; and the neutrality law of 1818 was then enacted for the purpose of defining the acts of disturbance which should be prevented, and of providing a punishment for such persons as might be found to be guilty of them.

But a friendly government violates no duty of good neighborhood in allowing the free sale of arms and munitions of war to all persons, to insurgents as well as to the regularly-constituted authorities; and such arms and munitions, by whichever party purchased, may be carried in its vessels on the high seas, without liability to question by any other party. In like manner its vessels may freely carry unarmed passengers, even though known to be insurgents, without thereby rendering the government which permits it liable to a charge of violating its international duties. But if such passengers, on the contrary, should be armed and proceed to the scene of the insurrection as an organized body, which might be capable of levying war, they constitute a hostile expedition which may not be knowingly permitted, without a violation of international obligation.

During the late Franco-German war, each party was free to purchase arms and munitions of war in this country, and did so; and Frenchmen whose hearts were with their struggling countrymen at home, or Germans who wished to join the invading armies of Germany, were free to leave the shores of the United States for that purpose, so long as they left as private citizens, unarmed, and without engagement made in this country to enter the service of a belligerent. They did thus leave, in vessels of several different nationalities. Neither this Government nor any other neutral government which may have allowed its merchant-marine to transport the arms and munitions of war or the passengers to Europe, was guilty of a violation of its duties as a neutral.

Even recognized war, therefore, cannot oblige neutral nations to contract the right of their citizens to engage in such commerce, which is lawful in time of peace, or to abridge the liberties of persons enjoying the protection of their flag, to such a point as to render illegal either of these proceedings; although in time of actual war the transportation on the high seas of articles known as contraband of war is to be made subject to the right of capture. But in time of peace no vessel of war has the

right to capture, or even to interfere with, molest, or detain upon the high seas a regularly documented vessel of another power.

This doctrine is not new in the intercourse of nations.

On the 10th day of April, 1858, Mr. Cass, then Secretary of State of the United States, wrote to Lord Napier, the envoy of Great Britain :

Undoubtedly a right vested in the armed cruisers of one state to stop and examine the merchant-vessels of another might be so exercised as to contribute toward the suppression of crimes upon the ocean. But this power of armed intervention might also be exerted at the expense of the maritime rights of the world. Such an exercise of force, so liable to be abused, will never meet the concurrence of the United States, whose history abounds with admonitions, warning them against its injuries and dangers. They have no disposition to surrender the police of the ocean to any other power, and they will never falter in their determination to enforce their own laws in their own vessels, and by their own power, and to oppose the pretensions of every other nation to board them by force in times of peace. \* \* \* To permit a foreign officer to board the vessel of another power, to assume command in her, to call for and examine her papers, to pass judgment upon her character, to decide the broad inquiry whether she is navigated according to law, and to send her in at pleasure for trial, cannot be submitted to by any independent nation without injury and dishonor. The United States deny the right of the cruisers of any other power whatever, for any purpose whatever, to enter their vessels by force in time of peace. No such right is recognized by the law of nations. As Lord Stowell truly said, "I can find no authority that gives the right of interruption to the navigation of states upon the high seas, except that which the right of war gives to belligerents against neutrals. No nation can exercise a right of visitation and search upon the common and unappropriated parts of the ocean, except upon the belligerent claim."

On the 8th of June, 1858, Mr. Dallas, the minister of the United States in London, had an interview with Lord Malmesbury, at the foreign office, on the subject of the detention and visitation of documented vessels of the United States by British cruisers on the high seas. Lord Malmesbury furnished Mr. Dallas with a written minute of the conversation which then took place :

Her Majesty's government are not prepared to justify or excuse such acts on the part of their officers as have been complained of by the United States Government, if they are truly reported. Her Majesty's government recognize the principles of international law, as laid down by General Cass in his note of the 10th of April, and that nothing of the treaty of 1842 supersedes that law. Her Majesty's government, however, think it most indispensable in the interest of civilization and the police of the seas that there should be a power of verifying the nationality of a vessel suspected, on good grounds, of carrying false colors. Her Majesty's government would wish to learn from the United States Government their views in detail on this point, in the hope that some mutual arrangement, by way of proceedings, to be executed by our respective officers, may be found effective without being offensive. The French have lately proposed and laid down this one, viz : that a boat may be sent alongside of a suspected ship, and may ask for papers, but not, unless invited, board the vessel. Such is our arrangement with France. Lord Malmesbury has given Mr. Dallas a copy of our instructions to our officers. Pending our negotiation on the above point, orders will be given to discontinue search of United States vessels.

On the 16th of the same June, the Senate of the United States unanimously adopted a resolution—

That American vessels on the high seas, in time of peace, bearing the American flag, remain under the jurisdiction of the country to which they belong, and, therefore, any visitation, molestation, or detention of such vessel, by force, or by the exhibition of force, on the part of a foreign power, is in derogation of the sovereignty of the United States.

It is also understood that the enlightened government of Spain has, in the recent case of the *Deerhound*, recognized the justice and force of the principle thus established in practice by France, Great Britain, and the United States.

That vessel was dispatched from Plymouth, (England,) with a cargo of arms, ammunition, and military clothing, destined for the Carlist insurgents in the north of Spain. She was captured by a Spanish.

cruiser on the high seas off the coast of Spain and taken into port. Lord Granville demanded her release, saying—

Her Majesty's government cannot acquiesce in the competency of the Spanish government to refer to a prize-court the case of the *Deerhound*; neither can Her Majesty's government admit that legal jurisdiction can be assumed by the Spanish government over a British ship which, in time of peace, has been seized upon the high seas by a public ship of Spain.

The government of Spain surrendered the *Deerhound*, and Mr. Carvajal informed the representative of Great Britain—

That if her release was agreed upon, it was only because of her having been captured in neutral waters.

The learned minister of Spain seeks to maintain, by a citation from an eminent English publicist, that this right of transportation may be subordinated by the necessities of self-preservation in the government which is contending with an insurrection. It is not necessary for the undersigned to assent to or to deny the justice of this proposition in the extreme case and with the great limitations stated by Sir R. Phillimore. But the acute intelligence of Admiral Polo cannot fail to perceive that the supposed act of self-preservation is none the less an act of war because alleged to be done in self-defense; and the undersigned cannot permit himself to assume that Spain maintains that such an invasion of the territory of another power as Phillimore refers to would confer upon the courts or military authorities of the invading nation the right to try and condemn, for alleged crimes, persons who might be captured on neutral soil. In the case of the *Virginus*, had Spain, after her capture by the *Tornado*, restored her and her passengers and crew to the United States, to be dealt with according to their laws, the appropriateness of the citation from the British publicist would appear to be more manifest.

Admiral Polo also cites an extract from a speech by Lord Lyndhurst, in the House of Lords, in March, 1853, in which the learned jurist endeavored to convince that distinguished body that, by the laws of England—

If a number of British subjects were to combine and to conspire together to excite revolt among the inhabitants of a friendly state, and those persons, in pursuance of that conspiracy, were to issue manifestoes and proclamations for the purpose of carrying that object into effect; above all, if they were to subscribe money for the purpose of purchasing arms to give effect to that intended enterprise, such persons would be guilty of a misdemeanor, and liable to suffer punishment, and that foreigners residing in England are punishable by the common law, precisely in the same manner, and to the same extent, and under the same conditions as natural-born subjects.

In view of events which have taken place since that speech was delivered, the undersigned might, were it necessary, feel disposed to doubt whether Lord Lyndhurst correctly interpreted English law, as understood by its administrators. But it is needless to dwell upon that consideration, because, as the undersigned has already pointed out, the United States have not left the character of that class of acts to be determined by unwritten common law, but have provided by statute which of them, if committed, should be regarded as criminal, and punished accordingly.

In the same connection Admiral Polo refers to a decision of a British court respecting the law of libel. It is not understood what precise bearing upon the present discussion this reference is intended to have. If it be intended to suggest the propriety or the expediency of limiting the freedom of public discussion in the United States upon the Cuban insurrection, the reply must be courteous but peremptory and distinct that the suggestion cannot be entertained. This Government tolerates the greatest freedom and latitude of discussion of public subjects.

It even permits, without objection, a journal in New York, which is currently reported to receive pecuniary support from official Spanish sources, to indulge in language vulgarly abusive and libelous toward the President of the United States and the undersigned, and calculated to excite disrespect toward the Government, and to destroy confidence in the institutions of the country.

The amiable and just minister of Spain will not ask a government which permits such freedom in a foreigner to restrain its own citizens within narrower limits. And it will probably occur to him that a comparison of the tone, temper, and modes of expression of the journals of this country (where no censorship prevails) toward Spain, with those of the journals of Madrid and of Havana (where it is understood that the government assumes the responsibility of controlling what shall appear) toward the United States, will show that the American press is quite as temperate, wise, moderate, and just as is the Spanish.

The undersigned will now proceed to show that the United States have faithfully performed all their international duties toward Spain during the existing insurrection.

The earliest case to which Admiral Polo invites attention is that of the *Mary Lowell*. It is not alleged, as it certainly could not be correctly said, that this Government had any knowledge or information of the sailing of this vessel, so that it is unnecessary for the undersigned in this connection to consider whether the voyage upon which she was engaged was or was not one which should have been prevented by this Government. And further, the *Mary Lowell* never reached Cuba except as a vessel captured by a Spanish man-of-war, and did no injury to Spain. The undersigned would be at a loss to understand why reference is made to her, were it not that Admiral Polo makes reference to the fact that a claim against Spain growing out of an illegal seizure of this vessel is now pending before a judicial tribunal in Washington, and attempts to prejudice the case. The United States having agreed to submit that question to arbitration, the undersigned declines to enter upon a diplomatic discussion of it.

The case of the *Salvador* comes next in point of time.

On the 19th of March, 1869, the esteemed predecessor of Admiral Polo handed to the Secretary of State an unsigned and undated memorandum, in the following terms :

From official information deserving entire credence, it is known that at the port of Jacksonville or Fernandina, on the coast of Florida, a steamer is being fitted out by the name of *Salvador*, (or perhaps some other name,) for the purpose of committing depredations, in the character of a privateer and with the flag of the Cuban insurgents, against the maritime commerce of Spain. The vessel will leave port with the United States flag, and at sea will replace it by that of said insurgents. Considering that this steamer, under the absurd pretense of sympathizing with the Cuban insurgents, has no other object than that of committing acts of piracy against Spanish commerce, it is earnestly hoped that the United States Government will use all the means it may deem necessary to avoid a proceeding so scandalous and so contrary to the law of nations.

The Government of the United States responded to this suggestion by giving immediate orders to its officials to prevent such a violation of law.

On the 22d of March Admiral Porter, acting for the Secretary of the Navy, advised the undersigned that proper instructions had been given to the commander of the North Atlantic squadron on this subject. On the 23d the Attorney-General advised the undersigned that such instructions had been given to the officers of the Government under his Department as it was hoped would lead to the prevention or punishment of such violations of law. And on the 5th of April the Secretary of

the Treasury informed the undersigned that the collectors of Fernandina and of Jacksonville had reported that no such vessel was fitting out at those ports. In fact, no act of piracy was effected or attempted upon the commerce of Spain by the Salvador, or, so far as the undersigned knows, by any other vessel. And when, nearly two years later, Mr. Lopez Roberts, in an elaborate note, which will be noticed hereafter, summed up the charges which Spain thought herself justified in bringing against the United States by reason of alleged Cuban expeditions from United States ports, nothing was said of the Salvador; and from the day when Mr. Lopez Roberts asked the interference of this Government to prevent a piratical expedition in that vessel, to the day of the receipt of Admiral Polo's note of the 2d of February, not one word of complaint was made to the undersigned respecting this vessel.

Admiral Polo now says:

Accordingly said steamer sailed from Key West at the beginning of the month of May following, without being obstructed in any manner, carrying on board 150 recruits and 2,500 cases of arms, which she landed on the 14th of the same month on a point of the island of Cuba called Nuevas Grandes, according to the testimony of one William C. Pincher, or Tinker, put in the hands of the Secretary of State on the 18th day of December, 1839, among several other documents, on which is founded a request for a recognition of belligerency in favor of the insurrection inaugurated by Cespedes.

It is presumed that the testimony thus referred to by Admiral Polo is that printed in the Senate Executive Document No. 7, at the second session of the Forty-first Congress, on the 110th, 111th, 112th, 113th, and 114th pages, under the name of William C. Tinker. A reference to this testimony shows that the affiant made only the following statement respecting the Salvador:

On the 14th of May last I landed at Nuevas Grandes from the steamer Salvador together with 150 men.

He says nothing about sailing from Key West—nothing about cases of arms. In point of fact, the undersigned was informed by the United States consul-general at Havana at that time that the Salvador was an English steamer, and that she made the voyage in question from the English port of Nassau, and not from Key West.

As Admiral Polo has deemed Mr. Tinker of sufficient credibility to be made a witness on behalf of Spain, the undersigned has examined his affidavit with care, and finds that it contains several important statements, a few of which are transcribed:

Upon landing I took eight men and went forward into the country. I had proceeded about twelve miles, when I came to the first encampment of Cuban troops at San Martin. There were about eighty men there, under command of a captain; they were armed and uniformed; those men were placed there as a *posse comitatus*, or guard to the civil court, which was then in session at that place.

I found the government completely organized, the various officers performing the duties and functions belonging to their offices. There were the departments of war, of finances, of the interior, and department of public instruction. The congress was then in session. I attended several of its deliberations.

I found the people exceedingly enthusiastic, apparently everywhere devoted to the government of the republic.

During the time I was in the island, I visited a considerable number of the encampments of the republican army, situated between Puerto Principe and Santiago de Cuba. I found in the district I visited about twelve thousand men under arms.

There are certain lines of defense which had been assumed before I arrived, and which were maintained up to the time of my leaving, and which, from late reports, I know to be still held. These lines were, from Nuevitas on the north to Puerto Principe, a distance of about eighty-five miles, and from Puerto Principe to Santa Cruz on the south. \* \* \* Roads leading to the "five-city" district.

The undersigned is constrained to find in these statements of a witness now brought forward by the Spanish minister an apparent conflict with other information furnished to Admiral Polo, and cited by him, that "the insurrectionary uprising which took place at Yara in 1868 did

not find extensive sympathies in the island of Cuba," and that these causes "reduced the insurgents in the eastern extremity of the island to the condition of wandering bands, destitute of arms and munitions of war."

On the same day, with the memorandum respecting the Salvador, Mr. Lopez Roberts left at this Department another memorandum, also unsigned and undated, which was of the following tenor :

According to information received from New Orleans, Mobile, Jacksonville, Fla. Charleston, Savannah, and other southern ports, filibustering expeditions are being organized in said ports for the purpose of joining the insurgents in the island of Cuba.

It is hoped that the Government of the United States will renew the orders previously issued to the local authorities, (district attorneys, collectors of customs, United States marshals,) to the effect that, acting in harmony with the consuls of Spain or other duly authorized agents, such measures may be taken, agreeably to law, as shall prevent and defeat such acts of aggression against a nation friendly to the United States, and their ancient ally.

This information also was at once brought to the notice of the Attorney-General, the Secretary of the Treasury, and the Secretary of the Navy.

The admiral in command of the North Atlantic squadron at the earliest moment dispatched a vessel to New Orleans. The officer in command of that vessel reported that he was unable to discover that there was even a probability of any such expedition being seriously contemplated, although its organization had doubtless been discussed, and perhaps proposed. The information from the other Departments was of the same tenor.

The next case, chronologically, to which attention is invited by the note of the 2d of February is that of the Grapeshot, which is said to have sailed from New York with arms and passengers for Cuba in April, 1869, soon after the attention of the authorities of the United States had been specially directed by the minister of Spain, away from New York to New Orleans, Fernandina, Mobile, Jacksonville, and other more southern ports, as the contemplated points for Cuban expeditions. Neither this Government nor the alert agents of Spain apparently had reason to suspect that the Grapeshot was about to make a voyage inconsistent with the international duties of this country to Spain; and that there was nothing in her voyage, so far as known to this Government, inconsistent with such duties, may be inferred from the fact that no special complaint has been made to this Government by the representative of Spain in respect of it until now. Her purposes were disclosed to the British authorities at Turk's Island during her stay there on her way to Cuba, and they, apparently, did not regard it as a case where they would be authorized to interfere. One aspect of the case only suggests a possible reason for its presentation now: that the claims of the representatives of Messrs. Speakman and Wyeth, who were passengers on the vessel, and were executed by the authorities of Spain, as was charged by the United States, in violation of law, have been agreed to be referred to a judicial tribunal in Washington. The undersigned most respectfully declines to discuss these cases diplomatically, notwithstanding Admiral Polo's statement that he has "no doubt" as to the facts respecting these unfortunate men.

The next case to which Admiral Polo invites attention is that of the steamer *Perrit*. Admiral Polo says:

In three weeks after the said reply of the Secretary of State, [meaning the note to Mr. Lopez Roberts, of the 17th of April,] the steamer *Perrit*, the property of Messrs. Spofford, Tileston & Co., of New York, was falsely cleared at the custom-house of that city for Kingston, in the island of Jamaica, with a large cargo and three hundred military men, under the orders of the same Thomas Jordan who was one of the officers of the expedition of the *Mary Lowell*.



It may be assumed that there is no pretense that the custom-house knew that the clearance was a fraud, since Admiral Polo says nothing on that point, but is, nevertheless, at pains to allude to a newspaper-rumor that some detectives in New York knew what was going on, and asserts that this rumor has never been denied. This Government had no means of knowledge of the movements of the *Perrit* beyond that which it might derive from the records of its custom-house. The undersigned will not do the amiable and intelligent minister of Spain the injustice to suppose that in his remarks about the newspaper-rumor he considered it of any serious importance whether the affirmations in an obscure paragraph in a newspaper were or were not officially denied by this Government.

It is now known that no armed or organized expedition went on the *Perrit*; that it consisted only of unarmed passengers, mostly Cubans, returning home—about two hundred in all.

The attention and vigilance of this Government were directed on that day by the minister of Spain in quite another direction. Three weeks from the 17th of April would be the 8th of May. But late in business hours on the 7th of May Mr. Lopez Roberts informed the undersigned that he had intelligence to the effect that the steamer *Quaker City* was being fitted out and armed at New York for the purpose of cruising against Spanish commerce. The undersigned telegraphed immediately to the marshal of the United States at New York to inquire into the matter with a view to further proceedings, and as soon as possible the next morning he laid the matter officially before his colleagues, the Secretary of the Treasury and the Attorney General. Each of those officers took prompt action, and the result was that the *Quaker City* was detained until, some weeks later, this Government was officially notified by the British minister at Washington that she had been transferred to a British subject, and was laden with flour, and bound to Jamaica.

There is no doubt that both the representatives of Spain at Washington and this Government had reason to think at that time that vigilance was necessary to counteract the activity of the friends of the insurrection. The steps already recounted show that. The information respecting the *Quaker City* came on the 7th of May, and she was immediately put under watch. On the 13th the undersigned submitted to the Attorney-General the expediency of instructing the judicial officers in regard to the steamer *Atlanta* at Philadelphia, the steamers *Memphis* and *Santiago de Cuba* at New York, and the steamer *Florida* at Chester, and the same instructions were sent respecting them that had been sent in respect of the *Quaker City*. Although it turned out in the end that none of these vessels were intended for the insurgents, a constant watch was kept on them until this fact was established.

At the same time the minister of Spain was informed that the United States attorneys of the several districts would receive directly from the Spanish consuls any facts they might be pleased to communicate respecting any violation of the neutrality laws of the United States, and was told that if proof should be furnished, judicial proceedings would be at once set on foot for the purpose of preventing or punishing such violations.

About this time, also, proceedings were commenced in the courts in the city of New York against several leading Cubans, supposed to be concerned in these attempts to violate the sovereignty of the United States. The parties were arrested, and released upon giving security that they would respect the laws.

Admiral Polo is pleased to say, in respect of the proceedings against these persons, that—

Only the district attorney at New York or the Attorney-General at Washington could have compelled the trial and punishment of these malefactors, but up to this day nothing of this kind has been attempted. Ryan escaped by force from the officer who had him in custody; but, although he was arrested at a subsequent period, never was he punished for any of his offenses until he was captured or the *Virginus*.

The undersigned takes the liberty to remind Admiral Polo of certain circumstances connected with the trial of Ryan and Jordan, with which he was probably unacquainted when he wrote his note of the 2d of February.

On the 27th of November, 1871, the district attorney of the United States for the southern district of New York addressed a letter to the counsel for the Spanish government in New York, in which he informed them that the United States circuit court would resume its session on the 6th of December following, and that it was his intention to call for trial at that session the indictment against General Jordan, and also to move the trial of William A. C. Ryan, adding :

You will recollect there are three indictments against Ryan, two for breaking the neutrality laws and one for escape and rescue from the marshal. I desire you to aid in procuring the witnesses for the Government, and to furnish all the assistance that you deem expedient.

When the circuit court convened, the district attorney found himself without the witnesses which the counsel for Spain had, on the 29th of November previous, given assurance would be present, and, under these circumstances, he was forced to have the several cases set down for hearing at a later day of the term. Accordingly, Jordan's, the first case, was fixed for trial on the 11th of that month. The district attorney then caused the following letter, on the 6th of December, to be addressed to the counsel of the Spanish government in relation to the witnesses, and the importance of securing their attendance, in order to enable him to proceed with the trial of Jordan :

I have to state that, in pursuance of your letter of the 22d of November, giving names of witnesses to be used in the prosecution of Thomas Jordan, subpoenas were made out for the persons named, and on the 1st instant delivered to the United States marshal for service, addressed respectively to the places given in your letter as the residence of such witnesses. F. A. Redburn, named in your letter as one of the witnesses, called at my office, and professed his willingness to accompany the deputy charged with the duty of serving the subpoenas, and I introduced him at the marshal's office where he promised to accompany the officer. I learn that he did not return to go with the marshal, as he had agreed, but in his place a person named Frederick R. Lowe appeared, and expressed his intention of replacing Redburn. On the 2d instant he wrote to the deputy, Mr. Tierny, in charge of the process, and agreed to meet him on Sunday night at Jersey City, and accompany him on his search for the witnesses. This appointment he failed to keep, and the marshal was obliged to proceed alone. He reports to me that he visited Port Tobacco, Md., given as the address of the witness Boyd; that he could find no person of the name in or about the place, which is a small village; that he inquired concerning Boyd from many of the inhabitants, and from the mail-carrier, who all assured him that no person of that name lived in the vicinity or had lived there for several years past. In Baltimore, in spite of diligent search, he could not find any George Bush who answered to the description of the person he was directed to secure. He further stated that the address must have been incorrectly given in your letter, as Franklin street is at a considerable distance from Druid Hill Park.

He then went to Paterson to secure Henry Raymond, that town being given as his residence, and having been told by Lowe that Raymond was employed in the machine-shop of McGurniss & Co., in that place. There is no such shop in Paterson. Inquiry that he made at other machine-shops and among machinists and workmen in the place failed to secure for him the person he sought.

Deputy Allen was sent to Lime Rock in search of George A. Mason, but returned equally unsuccessful. The only witnesses I have yet seen of the list furnished by you

are Lowe and Redburn. Lowe stated to me that he could procure Cameron, but has not yet done so. It will be impossible to do anything in the case of Jordan without the testimony of these witnesses, who cannot be found by any means at our disposal, and the case being set down for the 11th instant they should at once be procured.

On the next day, December 7, the district attorney again wrote to the counsel, expressing his willingness on behalf of the United States to pay the expenses of any person who might be designated by these gentlemen to accompany the officer charged with the service of the subpoenas. In this letter he says :

Subpoenas for such witnesses are now ready, and an officer will be kept prepared to start as soon as the person you may send, who will be able to designate to him the parties to be served, shall appear. I particularly request that you will send the person referred to without delay, as the cause is on the calendar for the 11th instant.

And again on the same day, December 7, still another letter was sent to the counsel informing them that in the indictments against Ryan he has caused subpoenas to be issued for the witnesses whose names they had furnished, adding :

I specially request that you will at once, in accordance with your offer, co-operate with the Government in obtaining the presence of those witnesses. I will make a further effort, by sending the marshal again with the subpoenas to each of the places named by you, and will pay the expenses of any person whom you or the Spanish consul will send to accompany the marshal, to point out to him the persons wanted as witnesses, and I repeat the request that my assistant has already made to you, that such person be promptly furnished.

The case (of Jordan) has been noticed for trial at each successive term, and your Mr. Craig has been advised of that fact, and requested to produce the witnesses, both by myself in person and by both my assistants, without any compliance or attempt to comply with the request. At each term Jordan has appeared, and his counsel has persisted on the case being tried, of which fact you have been repeatedly advised, and the Government, through the neglect on your part to carry out the assurance given when the indictment was formed, by producing the necessary witnesses or furnishing any information where they might be found, has been compelled to ask for continuance after continuance.

On the libel of the Florida you furnished me with affidavits fully justifying the seizure of that vessel, and, if true, her condemnation ; but when the claimants compelled the trial, not one of the affidavits was produced by you, although repeatedly urged to furnish them ; nor could one of the witnesses be found on the subpoenas issued by this office. Mr. Craig acted as counsel on that trial, and yet his vigilance was insufficient to aid us in finding the witnesses on whose affidavits, prepared by himself, the libel was issued.

On the 8th of December, in another letter to the counsel, the district attorney said :

I ask you explicitly, whether or not you intend to furnish a person, Mr. Redburn, or any one else, to accompany the marshal, and point out the witnesses for whom he is armed with process.

Mr. Redburn has seen the marshal, and been assured that his expenses will be paid ; he has arranged with the marshal to meet him at Taylor's Hotel, in Jersey City, this evening at 8.30, to take the 9.29 train ; the marshal will be there ready to go, if Mr. Redburn keeps his engagement ; I request you to see that he keeps it. The Government is using every effort to find the witnesses required by you, and has gone beyond the usual course in assenting to your proposition to pay the expenses of the person you promise to furnish to point them out.

Notwithstanding these unwearied efforts on the part of the district attorney, Mr. Redburn did not keep his appointment, nor did any one else appear in his place to accompany the marshal. The witnesses were not forthcoming on the 11th, the day set for the trial of Jordan, and the Government was again obliged to apply for a continuance.

In the face of these repeated disappointments, the district attorney again, on the 28th of December, addressed a letter to the counsel of Spain, informing them that the circuit court would resume its session,

on the 2d of January, 1872, and that he then intended to press the cases "of Jordan and Ryan to trial," adding :

I respectfully renew my request that as counsel for the Spanish authorities you furnish me with the witnesses material to establish the alleged violation of the neutrality laws in accordance with the assurances given to me when the prosecution against Jordan was commenced.

It cannot be contended, in face of these efforts on the part of the prosecuting officers of the United States, that the failure to bring Jordan and Ryan to trial was the result of any want of earnestness or of zeal on the part of the United States or of its officers. The witnesses on whom Spain relied in her allegations and in her charges were diligently sought, with great pains and at great expense, by the officers of this Government, without receiving any aid from Spanish agents in the search. If they existed they could not be found. Consequently, the Government being unable to adduce evidence upon which a conviction could be asked, the prosecution had to be abandoned. The responsibility thereof rests elsewhere than with this Government or its officers.

In an early stage of these proceedings the President, as will be shown, had put into exercise the extreme executive power of the Government to stop vessels without the intervention of judicial process; and the various departments of the Government exerted their respective functions through the wide extent of country, and in almost every port of its seaboard, either upon its own suspicion of improper movements or upon suggestions received through the Spanish minister, whose consuls, by the incessant employment of detectives, were frequently furnishing complaints, which were examined; and, as is apt to be the case with information thus obtained, and which is generally procured from persons of most questionable character, and who, for a consideration, make statements which they either know to be false or of which they have but little knowledge, they often found themselves set upon investigations which could result in no useful ends.

The information given to the consuls through the detectives often proved entirely unfounded, and seemed to have been designed, first, to obtain money; and, second, to keep the Spanish representatives in this country in a state of excitement, and to divert their attention, and thus to embarrass and annoy both governments.

The witnesses whose *ex-parte* affidavits furnished ground for the allegations of the Spanish consuls, were either wanting when it became necessary to establish those allegations in a court of law, or, if present, failed on the cross-examination to maintain their stories.

The characteristics of vagueness, indefiniteness, and absolute uncertainty have marked all the information furnished or proposed to be furnished by Spanish agents, attorneys, or counsel, since the outbreak of the insurrection, as a foundation for proceedings at law against the parties complained of.

But this Government, nevertheless, carefully examined all the evidence that came within its reach, with an anxious desire to miss nothing which might help it perform the full measure of its friendly duty toward Spain. For many months it was under the constant and severe strain of the effort to maintain its obligations as a friendly power.

In order to consider the complaints of Admiral Polo respecting the proceedings against Jordan and Ryan, the undersigned has been obliged to depart from the chronological history of the acts done by the United States in the performance of their duties toward Spain. To return. On the 17th of June, 1869, the Spanish minister at Washington informed the undersigned that he had positive and certain information of the or-

ganization in the city of New York of a military expedition, which was to embark from that port to the island of Cuba; that the expedition consisted of a large number of individuals who had been recruited and enlisted as soldiers by the agents of the Cuban insurrection; and that they were to take their departure within one or two days.

The Attorney-General was immediately informed of this, and the district attorney for New York was instructed on the subject. He replied by telegraph that action had already been taken by him. The officers of this Government, it therefore seems, had already acted in this important matter before the undersigned received the news from Mr. Lopez Roberts. As the result of their action most of the persons who were proposing to take part in the expedition were captured, and the expedition, which was to have gone out in the Catharine Whiting, was entirely broken up. The Catharine Whiting and the three tugs McCool, John Chase, and Maybe, and the schooners Fancy and Winona, laden with arms at Milford, Conn., were captured; and vessels were simultaneously sent to Newport, to the mouth of the Delaware, and to the entrance to Chesapeake Bay, a coast-line of several hundred miles, to intercept any who might have escaped, and who might still be bent upon pursuing the expedition.

On the 13th of July, 1869, Mr. Lopez Roberts informed the undersigned by note that he had heard of a number of persons enlisted for a military expedition to Cuba, who were quartered on Gardiner's Island, near New York, where they were detained against their will, by officers of the expedition, and asked that the prompt orders required by the urgency of the occasion might be issued to prevent the departure of the expedition.

On the same day the President empowered the district attorney and the marshal at New York each with the extraordinary powers authorized by the eighth section of the neutrality act of 1818; and identical instructions were issued to each of them, from which the undersigned takes the liberty of making the following extracts:

Orders have been directed to the commandant of the navy-yard at Brooklyn to place at your disposal such of the naval forces of the United States as you may require, for the purpose of preventing the carrying on of the military expedition referred to in the note of Mr. Roberts, or any other expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign power or state, or of any colony, district, or people with whom the United States are at peace, and more especially against the territories or dominions of Spain or against the island of Cuba.

The President desires and directs that you capture all persons engaged in any and every such unlawful enterprise as above referred to; that the leaders and principal instigators be held to be dealt with according to law.

Believing that many thoughtless and inconsiderate persons may have been misguided, deceived, and led into improper and unlawful engagements, under a sympathy for a people struggling for emancipation from oppressive rule, and for self-government and more liberal institutions, without due consideration of the unlawfulness of their conduct, and under the temptation of promises held out to them, he authorizes and directs the district attorney of the southern district of New York to release and discharge such of the privates or persons in inferior position or command in any such expedition or enterprise as he shall think may be discharged, with due reference had to the requirements of law and to the future enforcement of the laws and the maintenance of the peace and good order of the country, on such recognizance or security, or on such terms and conditions in each case, as to him shall seem expedient. But he directs that no person engaged in any such expedition or enterprise, who has been already taken in any recent similar unlawful expedition or enterprise, or who has been indicted for any violation of the neutrality laws or other laws of the United States, or who has given bail to keep the peace, &c., shall be discharged under this discretionary power given to the district attorney.

The district attorney is directed to make early investigation in order to the execution of this discretionary power, and for the purpose of bringing to punishment those

who are leaders and principals in any such unlawful expedition or enterprise, or who shall be the second time arrested or have violated their engagement to maintain the peace.

If you find that the naval forces thus placed at your disposal be not sufficient, or that any part of the land forces of the United States be necessary for the proper execution of the law, you will immediately advise me.

On the 16th of August, 1869, it being suggested that preparations were making for hostile expeditions against Spain, in aid of the insurgents in Cuba, on or near Saint Croix River, and particularly at Eastport and Calais, the district attorney for that district was instructed to use the utmost diligence in inquiring into the subject, and, if he found evidence sufficient to warrant it, to take all steps necessary in order to prevent violations of law, and to punish offenders.

On the same day the *Hornet* was detained at Philadelphia, under an order issued on the 13th of August. She was arrested, entirely on the motion of this Government, after she had actually begun her voyage with a clearance for Halifax. She was detained some time without anything appearing against her. She was then released, and she made her voyage according to her clearance. Returning thence, after having been fitted out in an English port, she is said by Admiral Polo to have taken on board men and coal off the coast of Massachusetts. She then put into Wilmington, in North Carolina, where she was libeled for a violation of the laws of the United States, and was condemned, and the hostile expedition against Spain, which it was in contemplation to make in her, was broken up.

The *Hornet* was detained at Wilmington until June, 1870, when she was released on bond. She came to New York, and was libeled again on the complaint of the Spanish consul. What then took place may be best described by transcribing a passage from a note from the undersigned to Mr. Lopez Roberts, dated December 28, 1870, in reply to one from Mr. Lopez Roberts, dated December 17, 1870. The undersigned then said that it appeared—

That the *Hornet* having been seized on the complaint of the Spanish consul only two months before the date of the correspondence, and a hearing, in which the Spanish consul took part, having resulted in the discharge of the vessel, no subsequent proof or anything in the nature of legal evidence other than a repetition of that which had already been passed upon by the court, and had been decided to be insufficient for the detention of the vessel, had been furnished by the consul or by any other Spanish officials.

The subsequent career of this vessel is thus described in the memorandum accompanying the counter-case of the United States at Geneva, which is referred to in Admiral Polo's note :

She afterward, in December, 1870, sailed from New York "for Saint Thomas and a market, then to a port or ports that the captain may direct, and back to a port of the United States, not exceeding six months."

She went to Nassau, afterward to Port au Prince; then to Aspinwall, where it is alleged that a filibustering expedition against Cuba went on board of her, which expedition was afterward landed on the coast of Cuba. She then went to Port au Prince, where she was, as it were, blockaded by the Spanish gunboats for several months.

In January, 1872, the Government of the United States sent a man of war to Port au Prince to bring her back to the United States, where, upon her arrival, proceedings were taken for punishing any violation of the neutrality laws of the United States.

It is of little consequence now what was the character of the *Hornet*, so far as the purposes of this discussion are concerned. In the only moment when she was in position to have done injury as an armed vessel, she was libeled and condemned by the courts of the United States. But it is not to be assumed that the undersigned assents to all of Admiral Polo's opinions regarding that vessel.

The first arrest of the *Hornet* at Philadelphia was made August 16, 1869. It has been seen that on the same day the officers in Maine were cautioned to be vigilant. On the 21st of the same month the attention of the Acting Secretary of State was called to alleged shipments of arms and ammunition at Cedar Keys and Fernandina, in Florida, and Mr. Potestad, the secretary of the Spanish legation, was informed in reply that this Government had already, four days before, called the attention of the district attorney and marshal in Florida to the subject, and that the senior officer in charge of the North Atlantic squadron had been apprised of the information.

On the 31st of the same month the active agents of the United States in Georgia telegraphed to the Attorney-General that eighty-three persons enlisted for the Cuban army would try to leave for Florida that night. They were immediately ordered by telegraph to stop the expedition and to indict the parties. The law-officers met with resistance and telegraphed for aid. They reported that the United States marshal had been overpowered. The Treasury immediately, by telegraph, put the revenue steam-cutters at the command of the proper authorities to stop the alleged expedition; and on the 4th of September, General Terry, commanding the Department of the South, was authorized to aid the civil authorities in maintaining the law. On the 6th of September the district attorney was able to say to the Attorney-General:

I have the honor and satisfaction of reporting herewith the result of our effort to capture the expedition *en route* for Cuba. \* \* \* I feel confident in asserting that the course pursued has completely broken up the expedition, at least for the present.

On the 13th of the same month this Government had received information which induced it to believe that arms and ammunition designed for Cuba were being shipped to Galveston, to be used there in arming hostile expeditions against Cuba. The district attorney of Texas was therefore directed to watch carefully for any indications of such expeditions, and to act promptly in preventing any violation of the neutrality laws of the United States, and in punishing all persons who violated them.

On the 28th of the same month the Secretary of the Treasury was requested by the Acting Secretary of State to order the proper officials to watch a suspected vessel in New Orleans, in order to prevent her from engaging in an armed expedition against the Spanish authorities in Cuba.

On the 23d of October, 1869, the undersigned was informed by the Spanish minister that the steamer *Lillian* had sailed from Cedar Keys on the 5th of that month, with about 450 men on board, and that she had been seized by a British man-of-war in British waters. The undersigned subsequently learned from other sources that she had been libeled and condemned for a violation of British laws.

In the same note of the 23d of October, 1869, the Spanish minister complained of the want of energy shown by the officers of the United States in the pursuit of the *Lillian*, which he asserted to have been a breach of neutrality on the part of the United States. And Admiral Polo now supplements the averment by saying that the Government of the United States had ample information and notice with regard to this expedition.

Whatever notice this Government may have had respecting this expedition, it gathered through the vigilance of its own officers. The representative of Spain furnished none until after it had been captured and broken up. When the United States naval officers in the Gulf learned

that the expedition was about to start, the *Tuscarora*, a man-of-war of the United States, was immediately dispatched to intercept it. But she was unable to proceed to Cedar Keys in consequence of the bursting of her steam-pipe. There was no lack of diligence on the part of this Government. The undersigned is also happy to add that there was no injury to Spain, since the expedition was intercepted and broken up, so that it never reached Cuba.

On the 8th of November, 1869, the marshal of New York informed the Secretary of State that his office was employing one superintendent and two or three detectives (as circumstances might require) to learn of infringements of the neutrality laws. He was told that his course was approved, and was instructed to continue his vigilance.

On the 10th he informed the Secretary of State that he inclined to the opinion that measures were on foot to get off a Cuban expedition. The Secretary of State, thereupon, on the 11th, asked of the Secretary of the Navy if a man-of-war could be detailed to assist in preventing such unlawful expeditions. The Secretary of the Navy thereupon instructed the port admiral of New York to render every assistance in his power in preventing the departure from New York, or that vicinity, of any unlawful expeditions in aid of the Cuban insurgents. The Secretary of the Treasury at the same time placed a revenue-cutter at the command of the marshal for the same purpose. If any expedition was contemplated at that time, it is believed that it was prevented by these efficient measures.

On the 15th of November the Attorney-General called the attention of the Secretary of State to the case of the steamer *General Dulce*, at Philadelphia. It appeared that some circumstances excited suspicion that she might be engaged in an illegal expedition; but, on examination, it was reported that there was nothing whatever of a suspicious character, either in the vessel or her outfit.

This brief but necessarily imperfect narrative of the exertions made by the United States during the year 1869 to perform their international duties toward Spain, cannot fail to satisfy all candid persons that they exerted all the diligence in that respect which the most cautious critic could require. Their active vigilance extended over a coast-line, from Eastport to Galveston, of upward of twenty degrees of latitude and about thirty degrees of longitude, with infinite sinuosities, and bays, and outlying islands. And yet it was ever and equally active. Wherever the extraordinary means of intelligence which they employed gave notice of an apprehended movement, their equally extensive means of action anticipated and prevented it. To have failed occasionally to thwart so widespread combinations would have been no subject for just crimination; because no mortal foresight can apprehend and guard against every contingency. But the undersigned avers, without fear of contradiction, that the record shows no such failure.

The undersigned does not understand that it is contended that between the sailing of the "*Lillian*" in October, 1869, and the sailing of the *Virginius* in October, 1870, any vessel except the *Upton* sailed with arms.

On the 22d of May, 1870, the undersigned received a telegram from the Spanish minister, from New York, in which it was averred that the "*George B. Upton*" had cleared from New York on the 14th of that month, ostensibly bound for Port au Prince, and was then lying off Montauk Point, at the east end of Long Island, in communication with the shore, and within the jurisdiction of the United States, and was en-



gaged in completing her fitting out for a piratical cruise against Spain, in violation of the neutrality laws of this country.

The undersigned at once communicated with the Navy Department, and a vessel was dispatched to Montauk Point, with several civil officers on board, in order to take possession of the "Upton" and proceed against her in the courts of law. On arrival at Montauk Point, the civil officers landed, and being unable to learn that any strange vessel had been there, reported their opinion that the information concerning the "Upton" was entirely without foundation. A communication from Mr. Lopez Roberts to the undersigned, on the 29th of June, 1870, showed that they were correct in that opinion; for it was then alleged by Mr. Lopez Roberts that the "Upton," after leaving the port of New York—

Proceeded to the vicinity of Barnegat light, and there communicated with the schooner "Quickstep," which (he said) had been previously sent from that place to meet the "Upton," and took from on board of her a large quantity of arms, ammunition, clothing, and other articles of war for the use of the expedition then on board of the "Upton," and of the insurgents in Cuba.

By the same note of Mr. Lopez Roberts it was disclosed, not only that he had been thus deceived in regard to the movements of the "Upton," but also in regard to her character. Instead of attempting a piratical cruise against Spain, as had been charged by Mr. Lopez Roberts, her mission was that of the peaceful conveyance of men and merchandise.

It cannot be contended that this Government had any knowledge or any reason for suspicion of the purposes of the voyage. Those who had charge of her, having had personal experience of the vigilance of the United States, and of their purpose to prevent all violations of their sovereignty, succeeded in concealing their designs, not only from this Government but from the ever-vigilant agents of Spain in New York.

Before taking up the case of the *Virginus*, it will be more convenient to first notice the remaining vessels referred to by Admiral Polo, but without comment on his part, viz: the "Florida," the "Edgar Stewart," the "E. D. Webster," the "Anna," and the "Fanny." The archives of this Department reveal nothing respecting the Webster and the Anna.

Respecting the Florida, they only show a complaint on the part of this Government of an interference by a Spanish gunboat with that vessel on the high seas, to which complaint no response has been given.

Respecting "the Fanny," it appears that on the 7th of June, 1872, the minister of Spain informed the undersigned that "the Fanny" had sailed the day before from Baltimore, and that her papers were fraudulent, and that he believed that the object of the steamer was to effect a clandestine landing of arms and other war-material, and perhaps even of men, on the coast of Cuba. He added that he had evidence that the customs officers of the port had had suspicions that the papers of the vessel were fraudulent. This communication being made after the vessel had sailed, the undersigned could only promise to make inquiries, which resulted in showing that the collector of customs at Baltimore, thinking it possible that the "Fanny" might be intended to form part of an expedition, had ordered her to be searched. The searching officers had reported that she had no contraband cargo. The collector had then ordered a revenue-cutter to follow her to sea, and to intercept any expedition which might appear to join her. The cutter kept her in sight until she was about seventy-five miles southeast of Cape Hatteras and about thirty-five miles off land, and there lost sight of her. Up to that time no expedition had joined her.

The facts respecting the "Edgar Stewart" appear to be these: On the

25th May, 1872, the Spanish minister informed the undersigned that she had sailed from the district of New London, where he charged that she had been fitted out for filibustering purposes, and he submitted some affidavits which he claimed implicated the collector in a knowledge that she was destined for an illegal purpose. As the vessel had sailed, the undersigned could only ask an investigation of the charges against the collector. The decision of the Treasury was, that while the investigation exonerated the collector from positive blame in the matter, the circumstances, which appeared to have been known to him by rumor at least, would have justified him in making further and careful inquiries; and he was told that, in any similar case that might arise in the future, he would be expected to exercise greater vigilance in ascertaining the facts. This vessel is now in Baltimore. The minister from Spain has submitted affidavits in order to establish that she was guilty of a violation of the neutrality law of the United States, at New London, in 1872; also, that she contemplates another violation; also, that she obtained her clearance at New London in fraud of the navigation laws. The affidavits, as fast as received, were submitted to the Attorney-General, and the vessel has been libeled on the alleged charges, and is now in custody.

The schooner "Resolute," a vessel not referred to by Admiral Polo, about March, 1872, sailed from New York to Jamaica, without exciting the suspicion of the Spanish agents in New York or of this Government. It is probable that there were no reasons at that time why suspicion should have been excited. From Jamaica she went to Saint Mark's, and from Saint Mark's to Port au Prince; while there, she was, on the 4th of June, 1872, transferred to Augustus Cheaveau, described in the instrument of transfer, a copy of which afterward came into the possession of the United States, as "a citizen of the republic of Cuba." There she took in ammunition and arms, and proceeded northward, landing Cheaveau at Charleston. She hoisted an ensign called "the flag of the republic of Cuba," and professed to be a vessel belonging to the navy of such so-called republic. With the change of character she took the name of "Pioneer." Coming near the waters of the United States, this vessel was seized by the United States revenue cutter "Moccasin," and taken to Newport, R. I., where she was libeled and condemned.

Having now disposed of the extraneous matter which has been introduced into the discussion of the case of the *Virginus*, the undersigned is prepared to consider Admiral Polo's remarks upon that vessel.

The *Virginus*, formerly a blockade-runner, was sold by the United States to one Paterson, a citizen of the United States, apparently an innocent person. He proved to be an agent of the Cuban insurgents, but that fact was not known to the Government of the United States, nor had it any means of knowing it.

She was registered at the custom-house in New York, and took out a clearance for Curaçoa. Her custom-house bond was in the regular form, except that it had but one surety, a circumstance not unusual, and which will be noticed hereafter. There was nothing in her manifest or papers, or in the circumstances connected with her departure, to attract attention or to excite suspicion, and she left, like any of the other hundred vessels leaving the same week, without attracting the attention of the Spanish consul or of the officers of this Government.

The labor which Admiral Polo bestows to endeavor to connect the United States with the subsequent proceedings of the vessel, before her capture by the *Tornado*, shows that he comprehends the inability of maintaining that the United States are liable for the consequences

of any acts of this vessel by reason of what took place at the time of her sailing from New York.

The *Virginus* is understood to have made her voyage to Curaçoa. Admiral Polo, indeed, asserts that her true destination was not Curaçoa, and he seeks to find in the character of her cargo, (breadstuffs, saddlery, and clothing,) reasons why she should have been suspected by a customs-officer. But the undersigned understands that she actually did go to Curaçoa, which is the best answer to an allegation that she was not to go there; and the undersigned cannot persuade himself that the accomplished minister of Spain will seriously contend that, because her innocent manifest did not produce conviction in a customs-officer's mind that she was on an illegal errand, this Government should be made responsible for her acts. Moreover, the statistical returns of the commerce and navigation of the United States (like those of most other manufacturing and commercial nations) show that the exportation of breadstuffs, saddlery, and clothing is not an unusual occurrence in the course of legitimate commerce, and that, if the lading of such articles is to be a cause of suspicion, a large amount of honest trade must be placed under vigilance. The commerce of the world will not allow the laws of contraband to be carried to this extreme. The proposition needs only to be stated to be repudiated.

The *Virginus* was recognized as a vessel of the United States from time to time at different ports in the Caribbean Sea, thus showing that she was engaged in commerce there. Admiral Polo records, with what purpose the undersigned is at a loss to imagine, an interview between a Spanish naval officer and a naval officer of the United States, in which the former denounced her to the latter as a "pirate," without a single indication of what is known as "piracy," and asked him to take her to the United States; the gallant officer of Spain, with the earnestness and unselfish generosity characteristic of his profession, but without official responsibility for the proposal he made, and without evidence of the extent of his personal responsibility, offering, if Spain should fail to establish there the fact of her "piracy," to himself assume the obligation of paying all damage.

The undersigned will not do Admiral Polo the injustice to suppose that he himself would regard the *Virginus* as a "pirate," or that, had the position been reversed, and had an American naval officer made such an offer to Admiral Polo, he would for a moment have dreamed of entertaining it.

That the vessel had none of the characteristics of a "pirate," as defined by international law, is beyond doubt. If Sheppard and Varona testify, as is alleged, to the proposition to attack the commerce of Spain, neither they nor others even intimate that such an attack was made. The declaration may prove the witnesses willing to have become pirates; it may not strengthen their credibility as witnesses in behalf of Spain; and yet Spain cannot impeach them when they say that they stopped short of the act. And yet it is upon such evidence that the reiterated appellation of "pirate" and denunciations of "piracy" rest. If all that Spain alleges against the *Virginus* be admitted as proven, it would fail to constitute what is recognized as piracy by the nations of the world.

Admiral Polo says that the *Virginus*, after leaving New York, "was efficaciously protected by the consuls and men-of-war of the United States; and he then adds, "thanks to which protection, she succeeded in forming for herself, outside of the material territory of

the United States, but within their legal jurisdiction, a sort of base, whence the *Virginus* was enabled to commit hostilities against Spain."

As the *Virginus* never returned within the material territory of the United States, after her departure from New York in October, 1870, the last phrase quoted in Admiral Polo's note may be important in some future contingencies, in its assertion of the extent of the legal jurisdiction of a state beyond its geographical limits. But it need not be here commented on further than to say that the idea of a vessel converting itself into "a sort of base," whence that same vessel carries on hostilities, involves a paradox resulting from the effort to apply the doctrine of the duty of a state not to permit its ports or its national waters to be made the base of naval operations by one belligerent against another, to a case where no belligerency is recognized as existing, and where, in fact, no hostile naval operations have occurred.

Of what military expedition the *Virginus* was to form part it is difficult to comprehend. The present most intelligent minister from Spain charges that she was to form part of some military expedition, but he has not shown either her capacity or fitness to take part in a military expedition, or that there was at that time any military expedition fitting out, of which she was to form a part, or with which he in any way connects her. Admiral Polo's watchful and indefatigable predecessor, who never failed to present in the strongest light all that his consuls could obtain through the detectives, and the questionable class of paid spies and witnesses, in a note addressed to the undersigned on the 17th of December, 1870, more than ten weeks after the *Virginus* had sailed from New York, in which he enumerated the vessels of which he thought he had cause to complain, had no suspicion that the *Virginus* had sailed with any evil purpose, and makes no reference to her.

If she had eluded the argus eyes of the detectives of the Spanish government, the inference is irresistible, either that her objects and designs at the time of her sailing were not improper, or if they were at that time such as the Spanish minister now alleges them to have been, they were so carefully covered and concealed as to escape the vigilance of the Spanish officials as well as those of this Government.

It has already been remarked that in view of the extent of the territory of the United States and the long range of sea-coast, and of the number of disaffected Spanish subjects in the country, the undersigned had expressly given authority to the Spanish minister (Mr. Roberts) to instruct his consuls, in case any information of illegal actions or intents came to their knowledge, to confer directly with the local Federal officers. They exercised the right thus accorded them, and if there had been any reason for suspecting the *Virginus* at the time she left the United States they would have known thereof. But she sailed unsuspected alike by the Spanish minister, the Spanish consul, and their detectives—unsuspected also by the United States.

Admiral Polo endeavors, however, to make certain alleged irregularities, or acts of non-observance of some of the requirements of the shipping acts of the United States, evidences of wrong intent on the part of the *Virginus*, and therefrom to deduce some responsibility on the part of the Government.

The shipping-laws of the United States are municipal regulations which it prescribes for itself, and to its own citizens, and the administration of which it intrusts to its own officers. It judges of the requirements and of the formalities to be observed to give its national character to private trading-vessels, and reserves to itself the punishment of evasions or omission of those requirements or formalities.

In the exercise of this sovereign right, the United States have required that a certain bond be executed with certain securities, and certain oaths be taken, for the obtaining of a register by a merchant ship. It requires that the ownership be in its own citizens.

Should a register be obtained in fraud upon its laws, or having been obtained, should the ownership be changed otherwise than in conformity with its laws, it has prescribed the penalty and the consequences. It enforces this penalty, and the punishment denounced against violations of these laws, as it does with respect to other municipal enactments of its own volition and in its own way. Foreign states are not expected to interpose, or to prescribe to the United States the mode or manner of enforcing its municipal laws, or the degree of leniency or the measure of severity to be observed toward those who may be supposed to have violated its enactments.

The omission to comply with the requirements of the laws may, at the option of the Government, deprive a vessel of its national character and of its right to the protection of the Government. This result may follow from innocent omissions and from accidental mistakes. The haste with which many commercial transactions are conducted has led in many instances to carelessness, and has, as is well known, been attended with omissions which, if enforced, might deprive some of the well known and most honest of the mercantile marine of a government of the protection of its national character, if the strict letter of the law were in all cases to be enforced.

Knowing this to be the fact in its own case, as well as in that of every commercial nation, the United States does not feel called upon in every instance to exact the pound of flesh and to enforce the utmost penalties of the law. It recognizes a difference between error and falsehood, and has not been guilty of the want of logic to enact that the omission to sign a bond in the prescribed form necessarily makes the register "false," or of the still greater fallacy of reasoning and of logic that "the falsity of the register, of the ship's roll, of the list of passengers, of the manifest, and of the clearance," shows that the voyage of an unarmed vessel, admittedly made in accordance with her clearance, was a military expedition against a country which the vessel did not visit for months subsequently, nor until she had visited divers others countries.

The long extract to which his excellency the Spanish minister calls the attention of the undersigned as doctrine laid down by a judge of the Supreme Court of the United States, is, unfortunately for the citation, not to be found in any book of decisions or of judicial authority. It could not be accepted before any judicial tribunal as authority or as a definition of law.

It is feared that his excellency the Spanish minister has been misinformed as to the nature and importance of this alleged expression, and has been misled by some newspaper extract or report of possibly some charge to a grand jury by some person who may at some time have been a judge. But his excellency may be assured that if the expressions which he has quoted were made by a judge of the Supreme Court of the United States, they certainly were not made by one who served out the term for which he was appointed; and that whatsoever of personal respect may be due to the unnamed author, the authority of the high court of which he is supposed to have been a member cannot attach to the citation.

The undersigned, while (denying the untenable doctrine advanced by Admiral Polo, that in case it should be made to appear that an expedition hostile to Spain had unlawfully departed from the shores of the

United States, the burden of proof would be on them to show that they had used due diligence to prevent it) feels that he has fully established that this Government, from the outbreak of the insurrection at Yara to this moment, has unremittingly and vigilantly performed the full measure of its international duties toward Spain. Even, therefore, could it be shown that Spain had suffered any appreciable injury which could be made the subject of computation of damage between nations, by reason of any of the vessels referred to in Admiral Polo's note of the 2d of February, no responsibility for such injury could be entailed upon the United States.

But the undersigned apprehends that not even the ingenuity and learning of Admiral Polo can, after the great precedent at Geneva, establish that claims of the nature now advanced on behalf of Spain do "constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation, or computation of damage between nations."

Admiral Polo indeed asserts that private injuries may have been inflicted by the *Virginus*. But no proof is offered of such injuries; and the undersigned is so fully persuaded that no private injuries were inflicted by any of the vessels enumerated by Admiral Polo, that he is constrained to disregard the hypothetical suggestion, and to declare that this Government is firmly convinced that no injury has been suffered by Spain for which reclamation can be demanded.

In the great tribunal which was convened at Geneva, the learned representatives of five powers, with the eyes of the whole civilized world turned upon them, declared that losses in the transfer of the commercial marine from the flag of a belligerent to that of a neutral, that enhanced payments of insurance, that the prolongation of a war, and that the addition of a large sum to the cost of a war and the suppression of a rebellion, do not constitute, on the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations. And the same tribunal, in another session, decided that a claim advanced by the United States for re-imbusement of the sums expended by them in the pursuit of the rebel cruisers should be rejected, because such expenditure was comprised in the cost of the war.

The United States have in good faith accepted these principles thus enunciated by this great tribunal. If Spain is disposed to question them, the undersigned, while deeply and sincerely regretting it, must respectfully decline a discussion upon principles which this Government regards as *res adjudicatae*.

For the first time it is brought to the official notice of the undersigned, by the official note of the envoy and minister of Spain of the 2d of February, that Manuel Quesada was sent to this Government in 1870 in the character of an envoy; and the representative of Spain has adopted and incorporated in his note a statement of Mr. Quesada, by which it appears that property, amounting to several hundred millions of dollars, belonging to Cubans, has been confiscated by the authorities of Spain. Such severe measures thus admitted by Spain would seem to furnish a partial explanation of the activity of the Cuban exiles; and would certainly seem to indicate that Spain has been no sufferer in this contest.

Admiral Polo closes his long and able note by what it may not be unjust to style a complaint at the asylum given in the United States to the refugees from the violence of the *Casino Español* and of the Havana volunteers.

This makes it proper that the undersigned should submit a few

remarks upon the general political relations of the United States to this unhappy controversy.

When the President entered upon the duties of his office in March, 1869, the Cuban insurrection was the first external question pressed upon his attention. The correspondence between Mr. Lopez Roberts and the undersigned, and the steps taken to maintain the international obligations of the United States toward Spain have already been noticed.

It was found that the rights of citizens of the United States were affected by the action of the authorities in the island in their efforts to suppress the insurrection, and Mr. Lopez Roberts was, on the request of this Government, authorized, in conjunction with the captain-general of Cuba, and without consulting the Spanish government, to settle questions arising with the Government of the United States or with its citizens, out of the occurrences taking place in that island, excepting cases of such gravity as might require consultation with the home government.

Under this arrangement various representations were from time to time made to Mr. Roberts, and some few questions were thus amicably adjusted.

During this time Mr. Roberts gave frequent assurances that the insurrection was being crushed, that it was at an end, that nothing remained in resistance to the government but a few individuals who were scattered and had taken refuge in the woods. He read to the undersigned telegrams or notes to this effect. Finally, in the spring or summer of 1870, the power given to Mr. Roberts was withdrawn by the government at Madrid, "in view," as the undersigned was officially informed, "of the favorable situation in which the island of Cuba then was."

Simultaneously with some of these proceedings political negotiations had taken place at Madrid. In compliance with suggestions which were understood to emanate from a high quarter in Spain, the President had indicated a willingness to proffer the good offices of the United States to secure a peaceful termination of the insurrection. The advances of the President were well received at Madrid; and although no practicable basis for continuing the negotiation was found, the representative of the United States was repeatedly assured that substantial reforms were to be granted to Cuba, and that provision was to be made for putting a speedy end to slavery.

By the slaveholders' revolution of June, 1869, in Havana, General Dulce, whose "generous moderation" is feelingly and appreciatively referred to by Admiral Polo, was driven out of the island, and the substance of political power passed into the hands of the *Casino Español*, where it has since remained. But, in spite of this, the government at Madrid continued its assurances respecting liberal reforms and the freedom of the slaves.

While the President was exercising the extreme powers of the Government, as already described, to counteract the incessant efforts of Spanish subjects who had taken refuge in this country, and, availing themselves of this large extent of the latitude of liberty and freedom of conscience which its laws and its policy allow to the citizen and to the stranger, were endeavoring to involve this country in embarrassments with Spain, cases of injuries to American citizens and their properties were arising which could not be adjusted by the undersigned and the minister of Spain. It was, therefore, a relief to be assured by Mr. Lopez Roberts that the insurrection was waning and was practically at an

end, and to have that assurance confirmed by the official announcement that the Spanish government regarded the situation in Cuba as so favorable as to justify it in withdrawing the power which it had given to its minister in this country and to the captain-general in Cuba to adjust the questions which might arise with regard to interests of citizens of the United States affected by occurrences in Cuba.

The unadjusted cases were therefore referred to Madrid for adjustment, and there, after a long delay, in marked contrast to the prompt action of this Government when the interests of Spain were affected, an agreement was entered into for their reference to the tribunal at Washington, already referred to.

The announcement of the practical close of the insurrection and of the withdrawal by Spain, on the ground of the favorable situation of the island, of the only concession made by her toward the reparation of the rights, or the prevention of acts injuriously affecting the interests of American citizens, was well calculated to lead to a relaxation of the severe tension to which the vigilance of this Government had for several months been subjected, and might well be pleaded in justification in case of any omission of vigilance.

The President on the 12th of October, 1870, issued his proclamation, in which, after reciting that there was reason to apprehend that evil-disposed persons had set on foot military expeditions, and fitted out vessels to act against powers with whom the United States were at peace, he continued:

Now, therefore, I, Ulysses S. Grant, President of the United States of America, do hereby declare and proclaim that all persons hereafter found within the territory or jurisdiction of the United States, committing any of the afore-recited violations of law, or any similar violations of the sovereignty of the United States for which punishment is provided by law, will be rigorously prosecuted therefor, and, upon conviction and sentence to punishment, will not be entitled to expect or receive the clemency of the Executive to save them from the consequences of their guilt; and I enjoin upon every officer of this Government, civil, or military, or naval, to use all efforts in his power to arrest, for trial and punishment, every such offender against the laws providing for the performance of our sacred obligations to friendly powers.

On the 17th day of the following December, the esteemed predecessor of Admiral Polo, Mr. Lopez Roberts, addressed to the undersigned the two notes which have been frequently referred to in this paper. He made several statements respecting the "Hornet," the "Perrit," the "Upton," the "Catharine Whiting," which are substantially repeated in Admiral Polo's note. He said nothing of the "Lowell," the "Salvador," the "Grapeshot," the "Lillian," or the "Virginus." He complained of the clemency of the United States in releasing the "Hornet" at Wilmington, and in not prosecuting several persons, whose names he gave as having been concerned in the affair of the "Hornet," or of the "Catharine Whiting," or of the "Upton." He also complained that no proceedings were pressed against the "Catharine Whiting," the "H. McCool," and the "Jonathan Chase."

Admiral Polo now renews many of these complaints, and the undersigned can, in response, only renew the answer given to Admiral Polo's predecessor, that the withdrawal of the power from Mr. Lopez Roberts to settle by agreement, in connection with the captain-general of Cuba, without consulting the Spanish government, questions arising with this Government or its citizens, and the repeated assurances of Mr. Lopez Roberts, that the insurrection was virtually suppressed, induced this Government to believe that the time had come for the exercise of clemency.

The undersigned then continued thus in his reply to Mr. Lopez Roberts:



The President did not and would not suppose that the government of Spain would lessen the means of protection to the persons and properties of citizens of the United States in Cuba, which it had extended during the insurrection at the request of this Government, unless it was convinced that the insurrection, which made it necessary, had virtually ceased. He could not and would not assume that a government which had maintained such friendly relations with this Government would voluntarily do so unfriendly an act as to withdraw, without notice, the powers conferred upon Mr. Lopez Roberts at its request, unless it was convinced that the necessity for them had ceased in consequence of the suppression of the insurrection. He was pleased to believe that, in the opinion of the Spanish government, the danger from the insurrection was over; that the time for milder measures had come, and that the blessings of peace were to follow. It did not appear to him that the restraints upon the commerce of the United States and upon the free movements of their citizens—measures which had been taken because the maintenance of the obligations of the United States as one of the family of nations appeared to require them—should be longer imposed. It did not seem to this Government that good could come from continuing preventive, much less punitive, proceedings against individuals or vessels, when the cause which prompted the alleged illegal acts was supposed to have disappeared. It was believed to be in harmony with the humane policy which has characterized this Government, that a suspension of the rigid prosecution of offenses (partaking of a political character) growing out of a sympathy with a political struggle in a neighboring island, might well take place. It was hoped that the benevolent example of the United States, in this respect, might, perhaps, be reflected in the policy of Spain toward Cuba. It was believed that the reforms which had been so often promised to the representative of the United States at Madrid were about to be granted; that the blot of slavery would disappear; that the right of colonial self-government would be given to the island; that the burdensome system of taxation would be abolished, and that, peace being restored, all the desired reforms being granted, and amnesty and pardon being given, the Government of the United States would be relieved from the disagreeable duties which it had performed for about two years.

Mr. Lopez Roberts will find in these considerations an evidence of the generous purposes and desires of the Government of the United States toward his government and toward the island of Cuba, and its logical action in reliance upon the promises and the representations of the Spanish government, and of its esteemed representative to this Government. He will permit the undersigned also to say (in reply to his suggestion that these persons have been stimulated and encouraged by the indulgence hitherto shown them by a benevolent government) that it seems to the undersigned that they have found their encouragement and their stimulus, not in the humane course of this Government, but in that love of liberty and in that sympathy with communities struggling against oppression and for freedom, which is the portion of all generous natures; and that such stimulus and encouragement will fail them when Spain shall imitate the benign policy of the United States.

For five years the policy of repression, of confiscation, of summary execution of political prisoners, of refusal of reforms, of denial of self-government, of maintenance of slavery, in short, the policy of violence and force, has held sway in Cuba. It is understood that the insurrection calls to-day for as many troops to keep it in restraint as were necessary in 1869.

During these five years this Government has watched events in Cuba, perhaps not always patiently, but certainly always impartially. It has seen vessels sailing under its flag intercepted on the high seas and carried into Spanish ports. It has seen the property of its citizens embargoed and their revenues sequestered, and when it has complained it has been met by promises of restoration; but the official assurances of Spain in that respect have in most cases not been complied with. It has seen its citizens condemned to death under the form of military law, and executed in violation of the treaty obligations of Spain. It has seen other citizens of the United States mobbed in the streets of Havana for no other reason than that they were citizens of the United States, or the accidental circumstance of the color of the dress. It has stretched its powers and interfered with the liberties of its citizens in order to fulfill all its duties as a sovereign nation toward the power which in Cuba was tolerating the evil influences of reaction, and of slavery, and of "the deplorable and pertinacious tradition of despotism" referred to by the minister of transmarine affairs, all of which made the things complained of possible.

It has refrained from the assertion of its rights, under the hope, derived from the constant assurances of the government of Spain, that liberty and self-government would be accorded to Cuba, that African slavery would be driven out from its last resting-place in Christendom, and that the instruments of the Casino Español would be restrained in their violence, and made to obey law, and to respect the treaty obligations of Spain.

But while so doing, it expected and still confidently expects, the time not to be far distant, when Spain will make reparation for the wrongs which have thus been inflicted upon their citizens.

The undersigned has seen with much satisfaction in the several efforts of the cabinet of Madrid, in opposition to the wishes and policy of the slaveholders of Cuba, proof of a desire of the Spanish government to correct the abuses of which this Government complains. Later signs, however, give cause to fear that the hand which holds human beings in bondage still is powerful.

The undersigned, in conclusion, renews the expression of the expectation of this Government that the oft-repeated assurances of the cabinet of Madrid with respect to Cuba may be carried into effect.

The undersigned avails himself of this occasion to renew to Admiral Polo the assurances of his most distinguished consideration.

HAMILTON FISH.

His Excellency Señor Don JOSÉ POLO DE BERNABÉ,  
*dc., dc., dc.*

No. 557.

*Mr. Young to Mr. Fish.*

No. 109 *bis.*]

UNITED STATES CONSULATE,

*Santiago de Cuba, Dec. 18, 1873. (Received December 30.)*

SIR: I have the honor to transmit herewith a complete list of the persons taken from on board the United States merchant-steamer *Virginus*. I was present on board of the United States steamer *Juniata*, at the solicitation of Commander D. S. Braine, when the remaining prisoners were delivered on board this morning. Those checked are the persons delivered, and those not checked are the names of those shot. I improve this opportunity to send this direct, as the *Juniata* leaves for New York at 5 p. m. to-day.

A. N. YOUNG.

[Inclosure in No. 109.]

*List of 155 people captured on board the American steamer Virginus by the Spanish steamer Tornado, brought to the port of Santiago de Cuba, and turned over to the authorities.*

Name.	Where from.	Married or single.	Age.	Occupation.
1. Joseph Fry.....	United States ....	Married ....	47	Captain merchant-vessel.
2. William Baynard.....	.....do.....	Single.....	37	Mate merchant-vessel.
3. James Floody.....	England.....	Married ....	25	Do.
4. J. C. Harris.....	United States .....	do.....	45	Miner.
5. John N. Boza.....	Puerto Principe .....	do.....	37	Farmer.
6. B. P. Chamberlain.....	New York.....	Single.....	27	Engineer.
7. Francisco Sotero Trujillo.....	Bayamo.....	do.....	37	Do.

List of 155 people captured on board the American steamer *Virginius*, &c.—Continued

Name.	Where from.	Married or single.	Age.	Occupation.
8. Edward Day	New York	Married	32	Engineer.
9. Porfirio Corbison	Santiago de Cuba	Single	26	Commerce.
10. John Williamson	United States	do	35	Oiler.
11. Peter Alfaro	Havana	do	26	Purser's clerk.
12. Thomas Grigg	Barbadoes	do	30	Mariner.
13. Frank Good	Jamaica	Married	37	Do.
14. Paul Rhuner	Ireland	Single	40	Fireman.
15. Barney Herrals	England	do	28	Do.
16. James Samuel	do	do	20	Mariner.
17. Hervey Frank	Barbadoes	do	21	Coal-bearer.
18. James Read	Africa	do	40	Fireman.
19. Samuel Card	Nassau	Married	24	Mariner.
20. John Brown	United States	Single	22	Do.
21. Alfred Hosel	England	do	22	Do.
22. Wallis Fied Price	do	do	20	Do.
23. George Thomas	Jamaica	do	22	Do.
24. Thomas M. Williams	England	Married	26	Fireman.
25. Ezequiel Dunham	Canary Islands	Single	27	Mariner.
26. Simon Brown	Nassau	do	29	Waiter.
27. Leopold Thomas La Rose	United States	do	18	Cabin-boy.
28. Alonzo Arcey	Trinidad	Married	38	Farmer.
29. William Rose	Scotland	Single	23	Mariner.
30. John Stewart	Sta. Martha, Venezuela	do	29	Do.
31. Henry M. Bond	England	Married	45	Do.
32. George Thompson	do	do	36	Do.
33. Ignacio Dueñas	Barranquilla, Colo.	Single	27	Cook.
34. Antonio Deloyo	Bolivia	Widower	30	Mariner.
35. Jos. Man. Ferran	Jamaica	Single	22	Cook.
36. Ramon Larramendi	Bayamo	do	27	Farmer.
37. Eusebio Gariza	Barranquilla, Colo.	do	22	Do.
38. Bernabé Varona	Puerto Principe	do	27	Proprietor.
39. Pedro Cespedes	Bayamo	Married	47	No occupation.
40. Arthur Molay	Puerto Principe	Single	19	Agricultur.
41. Francisco de Powas	Havana	do	19	Cabinet-maker.
42. Luis Sanchez, (his real name, Herminio Quesada.)	Puerto Principe	do	18	Student.
43. Joseph Boitel	Cardenas	do	26	Agricultur.
44. Augustin Varona	Puerto Principe	do	28	No occupation.
45. Salvador Penedo	Nuevitas	do	23	Merchant.
46. Henry Castellano	Giünes	do	29	App. machinist.
47. Jesus del Sol	Cienfuegos	do	38	Farmer.
48. José Otero	Havana	do	27	Cigar-maker.
49. Francisco Rivera, (his real name, Angustin Sta Rosa)	do	do	40	Do.
50. Oscar Varona	Puerto Principe	do	19	Student.
51. Justo Consuegra	Sta. Clara, Cuba	do	25	Mechanic.
52. William Valls	Puerto Principe	do	25	Commerce.
53. W. A. C. Ryan	Canada	do	28	Lawyer.
54. Charles Knight	England	Married	21	Engineer.
55. Henry King	United States	Single	27	Do.
56. William Wilson	Canada	do	24	Mariner.
57. Thomas Lindgly	Jamaica	do	18	Do.
58. Charles Debrosse	do	do	17	Printer.
59. William Danton	do	do	18	Tailor.
60. John Pothremouth	do	do	17	Tinsmith.
61. Edward Scott	Jamaica, U S	do	16	Do.
62. John Freemont	Curaçoa	Married	14	Mariner.
63. Nicolas Cardozo	Colombia	Single	14	Water.
64. José del Espíritu Santo	Jamaica	do	16	Cook.
65. Alfred Parker	United States	Married	31	Mariner.
66. Henry Knight	New York	Single	16	No profession.
67. Philip Marty	Curaçoa	do	20	Engineer.
68. Antonio Constantine	do	do	19	On board Spanish gunboat Ca Española.
69. Joseph Diaz	San Juan de los Baños.	Married	29	Farmer.
70. Juan Herrero	Havana	Single	34	Cigar-maker.
71. Alfred Lopez	Santiago de las Vegas.	do	19	Do.
72. José Igno. Lamas	Matanzas	do	23	Engineer.
73. Andrew Acosta	Giünes	do	24	Mechanic.
74. Francisco Castello	Regla	do	21	Student.
75. Benjamin Olazaga	Puerto Principe	do	17	Engineer.
76. José Madoe	Havana	do	24	Cigar-maker.
77. Ramon Pardos	Jamaica	do	32	Cook.
78. Francisco Gonzales	Havana	do	33	Student.
79. Joseph Pelaez	Malaga	do	15	Do.
80. Leonardo Alvarez	Santiago de Cuba	do	16	Silversmith.
81. Julio Arango	Puerto Principe	do	16	No profession.
82. Jose Hernandez	Havana	do	20	Merchant.
83. Nicolas Ramirez	Puerto Principe	do	23	Farmer.

List of 155 people captured on board the American steamer *Virginus*, &c.—Continued.

Name.	Where from.	Married or single.	Age.	Occupation.
84. Igno. Quintin Beltram	Andalco	Single	35	Clerk.
85. Perfecto Bello	Havana	Married	24	Actor.
86. Benoit Globes	France.	Single	34	Cook.
87. Nicolas Ruiz	Matanzas	do	26	Cigar-maker.
88. Juan Alvarado	Havana	do	34	Do.
89. Andrew Villa	do	do	24	Do.
90. Ricardo Trujillo	Cienfuegos	do	20	Student.
91. Ramon Calvo	Havana	do	40	No profession.
92. Silverio Sales	Colon	do	26	Mason.
93. Rafael Pacheco	Havana	do	39	Cigar-maker.
94. Alexander Calvo	do	do	39	Commercc.
95. Canuto Guerra	Melena, Cuba	do	22	Cigar-maker.
96. Canuto Sanz	Havana	do	25	Mason.
97. Leon Bernal	Puerto Principe	do	25	Agriculturor.
98. Emilio Garcia	Cardenas	do	20	Carpenter.
99. Gil Montes	Giines	do	23	Cigar-maker.
100. Rafael Cabrera	Havana	do	20	No profession.
101. Amador Rosillo	Bayamo	do	18	Farmer.
102. Igno. or Francisco W. Tapia.	Havana	do	24	Commercc.
103. Manuel Silveria	Bayamo	do	18	Do.
104. Santiago Rivera	St. Thomas	do	17	Trimming.
105. Antonio Gomez	Havana	do	39	Cigar-maker.
106. Andrew Echevarria.	Holquin	Married	24	Agriculturor.
107. José Marin	Havana	Single	24	Carpenter.
108. Luis Martinez	Cuba	do	13	Baker.
109. Domingo Salazar	Havana	Widower	27	Cigar-maker.
110. Pedro Pajarin	Cardenas	Single	26	Do.
111. Manuel Padron.	Havana	do	17	Do.
112. Alexander Cruz Estrado.	Cana y Islands.	do	20	Blacksmith.
113. Juan Soto	Havana	Married	28	Mechanic.
114. Felix Fernandez	do	Single	29	Commercc.
115. Manuel Perez	do	Widower	29	Cigar-maker.
116. José Anto. Ramos	do	Single	18	Do.
117. Ramon Barrero	do	do	19	Do.
118. Ignacio Valdez	do	do	23	Commercc.
119. Luis Felix Morejon	Matanzas	do	16	Silversmith.
120. José Santiesteban	Cobre	do	30	Carpenter.
121. Francisco Pacheco	Porto Rico	do	15	Tinsmith.
122. Evaristo Sansunegui	Havana	do	17	Student.
123. Ramon Gonzalez	Matanzas	do	18	Commercc.
124. Antonio Chacon	Havana	do	30	Cigar-maker.
125. Sireno Otero	Colon	do	17	Student.
126. Carlos Pacheco	Havana	Married	34	Cigar-maker.
127. Antonio Padilla	Puerto Principe	Single	27	Machinist.
128. Henry Canals	Pinal del Rio, Isle de Pino.	do	22	Commercc.
129. Indalecio Trujillo	Giines	do	21	Farmer.
130. Domingo Diaz	Trinidad	do	23	Student.
131. Pedro Sariol	Havana	do	21	Cigar-maker
132. Pedro Saez	do	Widower	23	Student.
133. Miguel Sayers	Santiago de Cuba	Single	18	Farmer.
134. Severo Mendive	Regla, Cuba	do	20	Student.
135. Patricio Martinez	Havana	do	18	No profession.
136. Henry Alaya	do	do	29	Commercc.
137. Manuel Saumell	Manzanillo.	do	14	No profession.
138. Domingo Rodrigues	Havana	do	30	Cigar-maker.
139. Luis Rebollo	Trinidad	do	19	Commercc.
140. Antonio Rivera	Porto Rico	do	20	Machinist.
141. Carlos Marin	Havana	do	24	Student.
142. Ramon R. de Armas.	Puerto Principe	do	25	Commercc.
143. Manuel Meneses.	Philadelphia	do	28	Surgeon-dentist.
144. Philip Meitzler	Charleston	do	21	Cigar-maker.
145. William Curtis	Jamaica	do	22	Tinsmith.
146. Samuel Hale	do	do	15	No occupation.
147. Samuel Gray	Harrisburgh	do	21	Carpenter.
148. Sidney Robertson.	Jamaica	do	20	Saddler.
149. George Winters	do	do	17	Shoemaker.
150. William Marshall	do	do	13	Apprentice.
151. Even Pinto	do	do	15	Cigar-maker.
152. George Burke	do	do	13	Apprent'e painter.
153. Carlos Gonzalez	Matanzas	do	22	Cigar-maker.
154. Leopold Rizo	Havana	do	25	Lawyer.
155. José Rudesindo.	Barranquilla, Colo	do	25	Cook.

The one hundred and two names checked were delivered on board the United States steamer *Junata*, Commander D. S. Braine commanding, this 18th December, 1873, in my presence.

A. N. YOUNG,  
*Consul of United States of America at Santiago de Cuba.*

[The names checked in the MS. are those which are numbered from 54 to 155, inclusive, in the above list.]

No. 558.

*Mr. Fish to Mr. Cushing.*

No. 4.]

DEPARTMENT OF STATE,

*Washington, February 10, 1874.*

SIR: You will receive herewith a copy of various instructions, dispatches, notes, &c., in regard to the steamer *Virginus*. You are familiar with the general history of that vessel, and you have received in personal interviews and intercourse the general ideas and views of the Government with respect thereto, all which you will find set forth in the papers herewith. I shall not, therefore, review them here.

The protocol of conference between myself and the Spanish minister on the 29th of November last, which disposed provisionally of the question of the steamer *Virginus*, was based on previous discussions, the substance of which you will find in certain memoranda among the accompanying papers, especially those of November 21, November 25, and November 27, by which it appears that this Government in its own interest, as well as in the interest of all maritime powers, denies the right of any other power to capture or molest on the high seas in time of peace any regularly documented vessel, bearing, as such, the flag of the United States, and reserves to itself the right to inquire whether, by reason of any act of such vessel, she should have ceased to be entitled to the protection of the United States.

It was in obedience to this doctrine of public law that Spain, by the protocol above mentioned, agreed to restore the *Virginus* and the survivors of her passengers and crew forthwith, leaving it open to Spain to prove to the satisfaction of this Government, if she could, that the *Virginus* was not entitled to carry the flag of the United States.

This admission of the illegality of the capture of the ship involved, of necessity, not only admission of the illegality of the capture of her crew and her passengers, but admission also of the wrongfulness of the summary execution of fifty-three of her crew or passengers at Santiago de Cuba.

The wrongfulness of the general act of the local authorities of Cuba in this respect was not confined to such of the passengers and crew as were citizens of the United States; it applied to all other persons, of whatever nationality, captured on board the *Virginus*.

As to such of the persons as were citizens of the United States additional wrong was committed, that of subjecting them to imprisonment without communication, and that of trying and condemning them in violation, as to manner and form, of the stipulations of treaty between the United States and Spain. The views of the Government in this respect are explicitly set forth in various of the documents annexed to your instructions.

Although no special reference to this question appears in the protocol of the 29th of November, still it was not lost sight of at the time, and is among the questions contemplated by the stipulation of the protocol in the words, "other reciprocal reclamations to be the subject of consideration and arrangement between the two governments."

Spain has already availed herself of the right thus reserved by presenting reclamation for indemnity, on account of alleged injuries done to her by the *Virginus*. You will find a copy of notes of Admiral Polo (the Spanish minister at this capital) on this subject, of the dates of December 30, 1873, and February 2, 1874, and a reply of this Department to the former, among the papers accompanying this instruction. The latter of the minister's notes has not yet been answered.

You are now instructed to make reclamation on the Spanish government for injuries to the crew and passengers of the *Virginus*, by reason of their capture and imprisonment; and more especially to call for indemnity to the families of such of the crew and passengers as were executed at Santiago de Cuba. In doing this, it will not be necessary at the outset to open a discussion in detail of the various particular questions involved in the general question, such as the right of the United States to claim redress for injury done to subjects of Spain, whether innocent or charged with complicity in the insurrection, or with other offenses, or to subjects of Great Britain or other powers, or only for injury done to citizens of the United States. All these particular questions, as also that of the amount or form of reparation, may be left by you for consideration until after response shall have been made by the Spanish government to the general demand for reparation in the premises. It will be in season then to judge how far the United States will go in a claim of indemnity of this nature as to persons, and in reference to a vessel of the character of the *Virginus*.

It will be proper for you to note that, according to the stipulations of the protocol, this reclamation is one of the possible differences between the two governments, which may be made the subject of arbitration.

I am, &c.,

HAMILTON FISH.

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No. 559.

*Mr. Fish to Mr. Cushing.*

No. 18.]

DEPARTMENT OF STATE,  
Washington, April 24, 1874.

SIR: Inclosed is transmitted for your information a copy of further correspondence between this Department and the minister of Spain at Washington respecting the *Virginus*, and the course of the United States towards the insurrection in Cuba. You will please regard these inclosures for the present as confidential.

I am, &c.,

HAMILTON FISH.

*Inclosures.*

1. Admiral Polo to Mr. Fish, December 30, 1873.
  2. Mr. Fish to Admiral Polo, January 9, 1874.
  3. Admiral Polo to Mr. Fish, February 2, 1874.
  4. Mr. Fish to Admiral Polo, April 18, 1874.
- (For above inclosures, see Nos. 16, 17, 18, and 19.)

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No. 560.

*Mr. Cushing to Mr. Fish.*

No. 7.]

PARIS, April 11, 1874. (Received May 1.)

SIR: I have received a dispatch of the Department, touching a class of questions which render me exceedingly impatient to reach Madrid and have access in some form to the Spanish government.

I am preparing to leave Paris speedily, proceeding probably by way of Lisbon.

I have the honor, &c.,

C. CUSHING.

No. 561.

*Mr. Cushing to Mr. Fish.*No. 9.] **BORDEAUX, April 20, 1874.** (Received May 7.)

SIR: My dispatch, No. 6, of the 10th instant, will have informed you of my conviction of the inexpediency of hastening to present myself to President Serrano, especially so long as he remains in his present position in the lines of Somorrostro.

I have come here for the purpose of taking passage this week for Lisbon in the regular packet of the English Pacific Steam Navigation Company, which affords me the only present convenient means of reaching Madrid.

I have the honor, &amp;c.,

C. CUSHING.

No. 562.

*Mr. Cushing to Mr. Fish.*No. 21.] **LEGATION OF THE UNITED STATES,  
Madrid, June 1, 1874.** (Received June 22.)

SIR: I have the honor to report that my official presentation to the President of the executive power of the Spanish republic took place on Saturday, the 30th ultimo, according to the usual forms practiced in Spain.

I am, &amp;c.,

C. CUSHING.

No. 563.

*Mr. Cushing to Mr. Fish.*No. 41.] **UNITED STATES LEGATION,  
Madrid, June 26, 1874.** (Received July 17.)

SIR: I have the honor to inclose herewith copy of communication addressed to the minister of state of Spain, presenting reclamation in behalf of the crew and passengers of the *Virginus*.

I am, &amp;c.,

C. CUSHING.

[Inclosure in No. 41.]

*Mr. Cushing to Mr. Ulloa.***LEGATION OF THE UNITED STATES,  
Madrid, June 26, 1874.**

SIR: I have been directed by the President of the United States to address your excellency, calling for reparation on behalf of the crew and passengers of the *Virginus*.

The protocol of conference between the Secretary of State of the United States and the Spanish minister at Washington, on the 29th of November last, which disposed provisionally of the question of the *Virginus*, was based on previous discussions of

the 21st, 25th, and 27th of November, communicated of course by the Spanish minister to his government. By the tenor of these conferences, it appears that the United States, in their own interest, as well as in the interest of all maritime powers, deny the right of any other power to capture or molest on the high seas, in time of peace, any regularly documented vessel bearing as such their flag, and reserve to themselves the right to inquire whether, by reason of any act of such vessel, she shall have ceased to be entitled to the protection of the United States.

It was in obedience to this doctrine of public law that Spain, by the protocol above mentioned, agreed to restore the *Virginus* and the survivors of her passengers and crew forthwith, leaving it open to Spain to prove to the satisfaction of the Government of the United States, if she could, that the *Virginus* was not entitled to carry the flag of the United States.

This admission of the illegality of the capture of the ship involved, of necessity, not only admission of the illegality of the capture of her crew and her passengers, but admission also of the wrongfulness of the summary execution of fifty-three of her crew or passengers at Santiago de Cuba.

The wrongfulness of the general act of the local authorities of Cuba in this respect was not confined to such of the passengers and crew as were citizens of the United States; it applied to all other persons, of whatever nationality, captured on board the *Virginus*.

As to such of the persons as were citizens of the United States, additional wrong was committed, that of subjecting them to imprisonment without communication, and that of trying and condemning them in violation, as to manner and form, of the stipulations of treaty between the United States and Spain.

The views of the Government of the United States in this respect have been explicitly set forth heretofore in communications to the government of Spain.

Although no special reference to this question appears in the protocol of the 29th of November, still it was not lost sight of at the time, and is among the questions contemplated by the stipulation of the protocol, in these words: "Other reciprocal reclamations to be the subject of consideration and arrangement between the two governments."

Spain has already availed herself of the right thus reserved by presenting reclamation for indemnity on account of alleged injuries done to her by the *Virginus*.

It now becomes my duty, in obedience to my instructions, and for the considerations thus adduced, to present to the government of Spain reclamation in behalf of the United States for injuries suffered by the surviving crew and passengers of the *Virginus* by reason of their capture and imprisonment, and indemnity for the families of such of the crew and passengers as were executed at Santiago de Cuba, and earnestly to press the same on the early attention of the government of Spain.

I avail myself of this opportunity to repeat to your excellency the assurance of my most distinguished consideration.

C. CUSHING.

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No. 564.

*Mr. Cushing to Mr. Fish.*

No. 49.]

UNITED STATES LEGATION,  
*Madrid, July 3, 1874. (Received July 23.)*

SIR: I entertain confident belief that, with steady but patient persistence of reclamation, we shall in good time reach a satisfactory solution of most, if not all, of the unsettled questions growing out of the capture of the *Virginus*.

It may become expedient ere long to communicate personally with the minister of state on the whole subject, with doubt only whether or not it is best to wait for written responses from the minister of state, such as to require argumentative written reply on my part, or in anticipation thereof to provoke or invite oral discussion.

Meanwhile, if you have had occasion to reflect upon the reserved questions comprehended in the general reclamation, it will greatly relieve me to receive directions from you to guide me in this behalf, more



especially as those questions are somewhat new, and the presentation of them may imply commitment of the United States in respect of principles of reciprocal public right.

I have, &c.,

C. CUSHING.

No. 565.

*Mr. Cushing to Mr. Fish.*

No. 59.]

UNITED STATES LEGATION,  
*Madrid, July 10, 1874. (Received Aug. 4.)*

SIR: I inclose herewith a communication from the minister of state, in answer to my note demanding indemnity for the officers, crew, and passengers of the *Virginus*.

You will perceive that the main contention of Mr. Ulloa turns on the pretended necessity or propriety of discussing, as one question, the claims preferred by Spain and those preferred by the United States.

Mr. Ulloa proceeds, on these premises, to maintain that because the claims of Spain were presented before those of the United States, therefore the first should be settled before the second. Such a thesis would be untenable in litigation between private persons. \* \* \*

Besides which, the claim of Spain has been exhaustively discussed in the dispatches interchanged between yourself and Admiral Polo de Bernabé, and it would be quite vain for Mr. Ulloa to think of making any profitable answer to your last note to Admiral Polo.

The entire theory of Mr. Ulloa's communication is manifestly untenable, because the claims of Spain involve questions entirely distinct from, and independent of, those of the United States.

\* \* \* \* \*

I propose, therefore, as in conformity with my instructions, to prepare, as soon as possible, and present, a full and complete reply to this communication of the minister of state.

I remain, &c.,

C. CUSHING.

[Inclosure in No. 59.—Translation.]

*Mr. Ulloa to Mr. Cushing.*

MINISTRY OF STATE, *Madrid, July 7, 1874.*

SIR: I have received your note of 26th ultimo, in which, being charged therewith by the President of the Republic of the United States, you are pleased to demand reparation with respect to the crew and passengers of the steamer *Virginus*.

Your note being principally based on the reservation stipulated in the protocol of the conference celebrated on the 29th of November last, between the representative of Spain in Washington and the Secretary of State, with respect to "other reciprocal reclamations" which were "the subject of consideration and arrangement between the two governments," there is no room for doubt as to the regularity (*procedencia*) of your action, as well because its postponement was authorized and agreed to in the aforesaid protocol, as because in the conferences nothing was directly said about it.

Pursuing in his turn a like path of right, Rear-Admiral Polo, in representation of Spain, demanded in due time proper reparation for the injuries caused in consequence of the expedition of the *Virginus* to the coasts of Cuba; and although he did in fact receive a polite answer from the Secretary of State, wherein the latter endeavored to refute the arguments set forth by our plenipotentiary in support of his reclamation,

he has not yet received any to the argumentative and extensive reply which he addressed to him on the 2d of February of the present year.

In recalling this circumstance, I have no other object than to call your attention to the importance of this matter and the difficulties in the way of clearing it up, which are at once revealed in the prolonged controversy still pending between our representative in Washington and the illustrious Secretary of State, Mr. Hamilton Fish.

Recognizing now, and repeating, as I ought to, the perfect right of the Government of the United States to select and fix the moment for reclaiming the reparation to which your note alludes, you will permit me, nevertheless, to observe that Spain having already presented, for her part, claim for the reparation which she deems herself entitled to obtain from the Government of Washington, this simultaneousness of proceedings in which one and the same government appears as claimant and respondent at the same time and in the same matter, is not in conformity to sound juridical principles, nor can be in any way dependent upon them. The bringing of the facts to light, due unity in the modes of proof, and, in fine, the examination of whatever may be alleged either for or against—these cannot but suffer considerably from the interruption of unity of connection\* in the discussion, without receiving in exchange any positive advantage.

It seems, therefore, preferable in the present case that, before one of the governments deduces its right to be indemnified by the other, there should be previous ventilation of the fundamental question, from whence alone that right can spring.

So, therefore, the Spanish government would see with satisfaction, in deference to the respective interests of both governments, and in the interest of the justice which may be on the side of each of them in these reclamations—

First. That, before all, it be made clear through the diplomatic channel which of the two governments has been prejudiced by the acts of the *Virginus*, and the degree of responsibility which pertains to the other for the injuries caused by the conduct of its subjects.

Second. That after the question shall have been sufficiently discussed between the two governments or their diplomatic representatives, each of them may consult, should it so deem proper, such administrative or judicial bodies as it may consider expedient for the most complete enlightenment of the matter.

Third. That preliminary examination of the question having been already initiated before the Government of Washington, by the minister plenipotentiary of Spain, the termination of the same be awaited before the United States formulate their reclamation against the Spanish government; it being understood that the preference conceded to Spain is to be considered as the result of a fortuitous act, springing solely from the priority of the date when Rear-Admiral Polo presented his reclamation in the name of Spain.

As you will observe, this is the only possible means of bringing matters about so that the final determination reached in this grave affair may be the result of the rectitude and good judgment with which we all desire to proceed.

As for the rest, it is incumbent on me to give you the assurance that the question being once made clear, and the responsibility which may fall upon it for the events of the *Virginus*, the Spanish government will employ the same diligence as it is obliged, meanwhile, to consecrate to the defense of its national interests, in fulfilling and satisfying whatever may be exacted of it by the responsibility which shall appear to have been contracted by it or by its delegates in the island of Cuba.

I improve this opportunity to repeat to you the assurances of my distinguished consideration.

AUGUSTO ULLOA.

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No. 566.

*Mr. Cushing to Mr. Fish.*

No. 64.]

UNITED STATES LEGATION,  
*Madrid, July 22, 1874. (Received August 18.)*

SIR: I inclose herewith copy of note to the minister of state on the subject of the officers, crew, and passengers of the *Virginus*.

I have, &c.,

C. CUSHING.

\* *Continencia*, a Spanish legal term, to express continued and connected unity in the conduct of a case, wherein judge, parties, and advocates are the same to the end.

[Inclosure in No. 64.]

*Mr. Cushing to Mr. Ulloa.*LEGATION OF THE UNITED STATES OF AMERICA,  
*Madrid, July 21, 1874.*

SIR: I have the honor to acknowledge reception of your excellency's note of the 7th instant, in reference to the reparation claimed by the United States in behalf of the crew and passengers of the steamer *Virginius*; and, after according to the matter such due reflection as its importance requires and as respect for your excellency dictates, I beg leave herewith to present the view of the general question entertained by my Government.

Your excellency, adducing the fact that the Spanish government, through its minister at Washington, Admiral Polo de Bernabé, had presented reclamations against the United States on account of the acts of the *Virginius*, and assuming that the discussion initiated at Washington is still pending, founds upon these premises three suggestions, namely:

1. That, in the first instance, there should be elucidation by diplomatic means as to which of the two governments had been prejudiced by the acts of the *Virginius*, and the degree of responsibility which belongs to the other in the damages caused by its subjects.

2. That after the question shall have been sufficiently debated between the two governments or their diplomatic representatives, each one should consult, if it thinks fit, such bodies, whether of administrative or of judicial order, as it shall deem convenient for the more complete illustration of the subject.

3. That, the previous examination of the question having been initiated before the Government at Washington by the minister plenipotentiary of Spain, the termination of that subject shall be awaited before the presentation by the United States of their reclamation to the Spanish government.

As to the second of these suggestions, it may suffice to state that no body, administrative or judicial, exists in the United States which could be consulted by the President in the view of obtaining more complete illustration of the merits of the question or questions now pending between the two governments in regard to the acts of the *Virginius*, or the acts of the Spanish officers at Santiago de Cuba in or subsequent to her capture. It is not for me to presume to say what means the Spanish government may have of such consultation with domestic, administrative, or judicial bodies for its further information in the premises. Of the means or expediency of any such consultation on its part, the Spanish government is, of course, the proper and sole judge. The Government of the United States, at any rate, does not possess, in this respect, any means of judicial recourse, or of administrative consultation, or, indeed, any pertinent means of action, other than diplomatic discussion with the government of Spain.

As to the first and third of the suggestions made by your excellency, the reply is obvious, to wit, that, on the 18th of April last, Mr. Fish addressed a note to Admiral Polo de Bernabé, which, it would seem, cannot have been brought to the attention of your excellency. That note replies in full to Admiral Polo's note of the 2d of February, discussing amply all the grounds or arguments of claim submitted by him, and constitutes, as it is confidently believed and assumed, a complete answer to and rejection of the indefinite reclamations preferred by him on account of any acts of the *Virginius*.

Hence I am unable to perceive the profitableness of any further discussion in that direction, which could of necessity admit only of iteration and repetition of previous facts and arguments, without beneficial result to either government, unless that of Spain should now be prepared to enter into consideration of the ulterior remedy stipulated in the protocol of the 29th of November last.

Furthermore, as the discussion initiated by Admiral Polo at Washington has, in fact, reached its conclusion, and as the Government of the United States has, as it conceives, made conclusive defense to the claims thus presented by the Spanish government on account of the acts of the *Virginius*, there ceases to be any possible complication of argument between the claims of Spain in that respect and the claims of the United States on account of the acts of the Spanish officers at Santiago de Cuba.

True it is, as your excellency suggests, that counter-claims exist in the premises—that is to say, claims of Spain against the United States on one account, and claims of the United States against Spain on another account. But, as *discussion*, the discussion of the claims of Spain against the United States has been exhausted, although not her means of action under the protocol. And thus, notwithstanding the existence of counter-claims, nothing, it seems to me, remains for discussion in this behalf except the claims of the United States against Spain.

Independently of all which, and in a broader view of the whole matter, I respectfully submit that there is no essential or logical connection between the respective claims of the two governments, other than in the purely incidental and immaterial fact of the relation of each to the *Virginius*.

The respective claims stand on different facts; they are referable to different reasons of public law and of right; they comprehend different subjects; and any decision upon either claim, howsoever reached, whether by common accord or by arbitration, would of necessity be wholly independent of any decision upon the other in so far as regards the considerations on which it might be founded and justified. In such circumstances there may be offset of *results*, but there cannot be any offset of *arguments* or legal considerations.

Coming, then, to the present reclamation of the United States, permit me to observe in the first place, that any question of the character of the *Virginius*, of her previous history, or of the rightfulness of her capture, is wholly irrelevant to the present issue.

If, indeed, the illegality of her capture by the *Tornado* were an open question, I conceive that it would be easy to establish the following points, namely:

1. The *Virginius* could not be deemed a pirate, nor her expedition a piratical one, by any possible construction of the law of nations.

2. The *Virginius* was not a cruiser. She never made or attempted to make captures. At most, even as alleged by the Spanish government, she was but a merchant-vessel having contraband intention unexecuted, and, as *prima facie* an American bottom, she was not subject to capture by Spain on the high seas.

3. No municipal law of Spain could operate to impart legality to capture on the high seas; such authority could only be derived from the law of nations or convention, and in the present case it cannot be found in either.

4. The Spanish government itself, at the instance of the United States, had expressly waived all pretension of any such right of capture on the high seas in the modification made by Captain-General Caballero de Rodas on the 18th of July, 1869, of the tenor of his decree of the 7th of the same month, repealing the previous decree of Captain-General Dulce.

These and other pertinent suggestions might be made, I repeat, if the question were an open one; which, however, it is not, it having been explicitly determined by the protocol of November.

Unlawful, therefore, as was the capture of the *Virginius*, prejudicial as this capture was to the maritime rights of all nations of either hemisphere, injurious as it would have been, in the long run, to the interests of Spain herself to have any such pretended right of capture interpolated into the law of nations—nevertheless, and all these premises being admitted, and while the mere capture itself would have constituted serious cause of complaint, still, if the Spanish authorities in Cuba had subsequently pursued the course indicated by international law and by the universal practice of nations, that is to say, if they had taken the vessel into port for examination, and for possible trial before a court of admiralty, simply detaining uninjured her crew and passengers meanwhile, in such circumstances the injury done to the United States, although seriously justifying demand of redress, would not have assumed the portentous proportions which it actually did in consequence of the wholesale massacre of her officers, crew, and passengers, perpetrated at Santiago, which shocked the public sense of Europe as well as of America.

It is of these incidents which it is my duty now regretfully to speak, and to characterize them as they deserve, in the name of international law, of humanity, and civilization, by aid of the lights furnished by Spain herself as well as by other governments.

For it was the great fact of the inhuman slaughter in cold blood at Santiago de Cuba of fifty-three human beings, a large number of them citizens of the United States, defenseless persons, shot without lawful trial according either to the law of nations or to treaty, shot without any valid pretension of authority in the laws of Spain herself, and to the horror of the whole civilized world—this it was which produced such intense emotion in the United States, and which placed the two nations in imminent peril of war, so happily averted by the superior wisdom and patriotic discretion of the governments of Spain and the United States.

Your excellency will pardon me for repeating that this act has no conceivable justification, either in the law of nations or the municipal law of Spain, or in any conventional law; it being, on the contrary, in plain violation of treaty with the United States.

It was a dreadful, a savage act.

Your excellency, I feel sure, cannot condemn this language as too strong for the actual circumstances. For is it not the very language constantly applied at this day, in public documents and debates, to other acts of the same class, and especially to the shooting of defenseless prisoners? Is it not the mere echo of the cry of indignation and of horror which comes up from all Europe, in view of the military execution of twenty-three prisoners at Estella by Dorregary—the lamentable voice, as it were, of the outraged conscience of Christendom—and which still rings in our ears?

Nay, does not the fact of the unjust military execution of a single German subject at Estella inspire all Germany with indignation? And can the United States be silent

in face of the equally unjust military execution of many of her citizens at Santiago de Cuba?

Pardon me for thus alluding to incidents of civil war in this country, which, however, have ceased to be domestic incidents, and belong now to the general history of our times, and which, strikingly in contrast as they are with the conduct of the armies of the republic, may not improperly be alluded to here, in view of their manifest pertinence, and at the same time in the spirit of perfect deference for the government of Spain.

Indeed, it affords me gratification to witness and to honor the expressed determination on the part of the Spanish government, and of its generals in the field, never to lose sight of the sacred rights of humanity, even in the presence of the worst excesses of pitiless war, and in the face of whatsoever provocation.

But that which is wrong at Estella cannot be right at Santiago de Cuba.

I will not cease to believe, therefore, that the government of Spain, manifesting as it does thus conspicuously its utter condemnation of such heinous acts, and providing indemnity for the families of the victims thereof, will in the same spirit of exalted self-reliance be prepared to do justice to the present reclamations of the United States.

With which I have the honor to renew to your excellency the assurance of my highest consideration.

C. CUSHING.

No. 567.

*Mr. Fish to Mr. Cushing.*

No. 59.]

DEPARTMENT OF STATE,

*Washington, August 21, 1874.*

SIR: Your dispatch No. 41, inclosing a copy of your note to Mr. Ulloa presenting the reclamation on behalf of the officers, crew, and passengers of the *Virginus*, was received upon the 17th of July. Upon a careful reading of this note to the minister of foreign affairs, it appeared to place the reclamation, even in the case of those who had been executed, principally, if not entirely, on the ground that the capture of the vessel was illegal. While it may be said that the capture being illegal, reparation must follow for all the subsequent acts, including the executions, at the same time it seemed that great stress might be laid upon the fact, at least so far as American citizens were affected, that such bloody deeds as were enacted at Santiago were contrary to the usages of civilized nations, in violation of treaty-obligations, without parallel, and entirely without excuse, and demanded full and complete reparation, entirely apart from the question of the illegality of the capture of the vessel. Nothing was said, however, on this point, as every confidence was felt that in the further presentation of the case, in your own way, you would completely and forcibly represent the whole case in conformity with the views and on the grounds orally discussed between us before your departure on your mission, and in such form as to make it most effective in its operation upon the Spanish government, and in the estimation of this Department.

Your dispatch No. 59 was also received, inclosing a copy of Mr. Ulloa's note in reply to your demand.

The Department is now in receipt of your No. 64, inclosing a copy of your reply to the minister of state. Your reply has been read with care and lively satisfaction.

Your presentation of the case, and the light in which you have placed it, meet with the entire approval of this Department.

It is most disappointing and unsatisfactory to learn, after the presentation of the claim for reclamation had been delayed many months, when ample time had been given for every investigation which could be required, when an opportunity had arisen for the government of Spain to meet the question freed from the excitement which surrounded the acts

which were complained of, when even the Spanish government had become loud in its expressions of horror at the execution of defenseless prisoners, in cold blood and without trial, that the answer submitted to your demand for redress for the occurrences at Santiago should be simply a plea for delay.

You will, on proper occasion, express to the government of Spain the strong feeling of this Government, that the questions so fully presented by you should be considered without delay, and that ample reparation, now too long deferred, should be promptly furnished.

This Department awaits with interest your further communication on this question.

I am, &c.,

HAMILTON FISH.

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No. 568.

*Mr. Cushing to Mr. Fish.*

No. 91.]

LEGATION OF THE UNITED STATES,  
*Madrid, August 31, 1874.* (Received September 28.)

SIR: I transmit herewith copy of the original, with translation of a note from the minister of state, in rejoinder to my second communication to him in the matter of the *Virginus*.

You will perceive, on reading this note, that, long as it is, it absolutely abstains from contesting any of the positions of my communication, and is wholly confined to the task of assigning reasons to justify the reference of the questions involved to the council of state; for that is the consultative body to which Mr. Ulloa alludes as the one whose opinion on the question is desired by the executive.

The council of state (*consejo de estado*) is composed of the ministers, and of a considerable number of other persons aggregated to them, for the purpose of examining and advising in the solution of administrative questions of transcendent magnitude.

Thus, on a recent occasion, the great controversy between the minister of hacienda and the British holders of Spanish bonds was referred for solution to the council of state; and such reference is common in other questions of similar importance.

I understand that, at or about the time of the date of Mr. Ulloa's note to me, he made verbal explanations, in the same sense, to representations which the British chargé d'affaires here had been instructed to present, in complaint of the delay of the Spanish government to satisfy the reclamations of the British government in behalf of the families of British subjects of the crew of the *Virginus*. I assumed in my note to Mr. Ulloa of July 21 that your communication to Admiral Polo de Bernabé of April 18 was to be regarded as a definite and final rejection of all reclamations made by the Spanish government against the United States on account of the *Virginus*; and I shall so continue to assume, unless otherwise advised by you.

Is it desirable that, in conversation with Mr. Ulloa, I should explicitly call his attention to this point in the present stage of the discussion,

or shall I wait, in that respect, until the opposite reclamation of the United States shall have been favorably answered by the Spanish government, or answered unfavorably, so as to raise the question of arbitration as the ultimate means of redress for the United States ?

I have, &c.,

C. CUSHING.

[Inclosure in No. 91.—Translation.]

*Mr Ulloa to Mr. Cushing.*

MINISTRY OF STATE,  
*Madrid, August 14, 1874.*

SIR: On the 1st instant the note of the 21st ultimo reached me, in which you are pleased to examine the reasons I had the honor to lay before you in my note of the 7th of July last, and which prevented the Spanish government from giving an immediate solution, as it would have desired, to the reclamation initiated by the Government of Washington in regard to the capture of the steamer *Virginus*.

When I addressed to you the note to which I refer, there was no information in this ministry of the reply which, on the 18th of April, the honorable Secretary of State, Mr. Hamilton Fish, had given, and the argumentative answer of the minister of Spain in Washington, of date 2d of February, and only some days afterward did a printed copy reach my hands of so important and extensive a document, transmitted by Rear-Admiral Polo, shortly before leaving that country.

This circumstance will satisfactorily explain to you that I could not take into consideration the communication of Mr. Fish in my note of the 7th ultimo, and that I should at that time have considered unanswered the reply of our representative at Washington.

But even after having notice of the reply of the honorable Secretary of State, it is impossible for me to concur in your enlightened opinion, according to which, the ample and complete answer of Mr. Fish being once understood, the profitableness of any further discussion is not perceived by you, which, in your opinion, would necessarily constitute but a reiteration of facts and arguments, without beneficial result to either of the two governments.

In regard to the first point, you will permit me to say to you, that without ceasing to render the most complete justice to the eminent endowments which distinguish the worthy Secretary of State of the United States, and to his superior enlightenment, demonstrated once more in the discreet communication of the 18th of April last, nevertheless, the Spanish government cannot consider it as conclusive and victorious refutation, so as to put an end to the existing debate in which we are occupied.

And in regard to the second point, I beg you to observe that, precisely in order to avoid the inconveniences involved in the retortion of arguments, the persistence in appreciations, and the repetition of facts already alleged by both parties, and which would render this discussion interminable, the Spanish government has believed that the most legal, the most practical, and the shortest method was to recur to the high consultative bodies of the nation, that they may enlighten it with an authoritative decision, having before them all the antecedents, and even the very reply of April 18, which can throw much light on the question by its detailed reasonings, its extensive details, and the copiousness of data with which it abounds.

If, as you are pleased to manifest, in the administrative institutions of the United States there do not exist corporations analogous to ours, with which to consult in certain matters, such exception cannot exempt us in Spain from the right, and even the duty, of seeking such security of sound action in those decisions which are of considerable intrinsic importance, and which involve great responsibility for the executive power. And if this guarantee is indispensable, and cannot be refused in ordinary circumstances, to those intrusted with the administration of the country, you will agree that, with greater reason, the government which at present rules the destinies of Spain should protect itself with it, and invest its acts with such respectable sanction, seeing that at the present time the government cannot fortify its own judgment, in the solution of matters like that of the *Virginus*, with the opinion of the Cortes.

The Spanish government does not conceive that the course which it thus proposes to follow can be interpreted in any quarter as an expedient to postpone the principal question, or to elude the responsibility of its acts. Such a purpose could not be entertained, either under the point of view of self-estimation, or under the point of view of its interests pledged, to-day more than ever, in that the solution, whatever it may be,

of this affair, should be presented to the eyes of all, invested with the prestige of justice, of impartiality, and of the purest good faith.

If, in the reclamations in consequence of the capture of the *Virginus*, the only object were to repair as much as possible the damage done to certain individuals, or to equitably indemnify the innocent who suffers the consequences of an act in which he took no part, and which was carried out by one who should have provided for his support or sheltered his old age, the legitimate impatience which the hope of finding a truce to his misery excites in such destitute person could be justified; and then the government would not remain indifferent before an unmerited misfortune.

But when this aspect of the question appears as secondary besides other rights and other interests which are claimed and invoked, the Spanish government considers it to be its duty to elucidate these with the care they merit, in the assurance that the relative delay which this examination may produce will be highly beneficial to the most scrupulous exposition of the truth of the facts and of the severe application of the principles of justice, the only object the attainment of which is proposed by either government.

I improve this opportunity to reiterate to you the assurances of my most distinguished consideration.

AUGUSTO ULLOA.

The MINISTER PLENIPOTENTIARY  
Of the United States.

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No. 569.

*Mr. Fish to Mr. Cushing.*

No. 80.]

DEPARTMENT OF STATE,  
Washington, October 27, 1874.

SIR: Referring to your dispatch No. 91, transmitting a copy of the rejoinder of Mr. Ulloa, the minister of state, to your second communication in the matter of the *Virginus*, and to your comments thereon, I have to say that the course to be adopted has been carefully considered in the light of the facts presented by you. \* \* \*

Mr. Ulloa, as you state, refrains from further discussion of the questions involved, and contents himself with assigning reasons why it is proper to refer the matter under discussion to the council of state, and had, as you further state, made similar verbal representations to the British chargé d'affaires, who had been instructed to complain of the delay of the Spanish government in giving a decisive answer to the demand of Great Britain.

You state that you shall regard the communication of the Secretary of State to Admiral Polo de Bernabé of the 18th of April as a definite and final rejection of the claims of the Spanish government, leaving it to that government to seek further redress, if at all, through the stipulation of the protocol of November 29, 1873, and ask whether you should explicitly call the attention of Mr. Ulloa to that point, or delay until a definite answer shall have been received to the reclamation on the part of the United States.

Concerning the reclamation of the Spanish government, \* \* \* you may state that as the case now stands the demand of Spain has been rejected, and no probability exists of a change of decision on that question.

The reclamation of the Government of the United States stands upon different ground, and while being maintainable because the *Virginus* was illegally captured, is also maintainable upon the simpler and broader ground that no informality in the papers of the vessel, and no facts arising from her character or acts, could, under any circumstances, palliate or excuse the wanton, wicked, and brutal assassination of defense-



less men, who had unfortunately fallen into the hands of the military authorities in Cuba.

The rejoinder of the minister of state is a plea for delay.

It is doubtless competent for the government of Spain to take such advice and counsel as it may desire, but this is a domestic question in which this Government can in no way participate.

The Government of the United States, satisfied of the justness of its reclamation, presents it with no doubt or hesitation. We require no reference to assure us of the propriety and justness of our demand.

If it be necessary to say anything on this point, you will inform the minister for foreign affairs that it is not the intention of this Government to take any part whatever in the means by which the government of Spain may reach a conclusion, but that we insist that such conclusion should be speedily arrived at, and this vexatious and dangerous question be once for all adjusted.

You are therefore instructed to press the reclamation of the United States upon the government of Spain firmly and plainly, and to represent that the delay in according to this Government what has been too long withheld is deemed a serious menace to the continued good relations of the two countries.

I am, &c.,

HAMILTON FISH.

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No. 570.

*Mr. Fish to the President.*

DEPARTMENT OF STATE,  
Washington, November 20, 1874.

SIR: I have the honor to lay before you a copy of a correspondence between the British chargé d'affaires at Madrid and the Spanish minister of foreign affairs in relation to the indemnity claimed by Great Britain for British subjects who were captured on board the *Virginus* and were slain at Santiago de Cuba.

This correspondence comes into my possession confidentially, but through a well-informed and trustworthy channel, and may be relied upon as substantially, although probably not a literally, accurate translation of the originals.

I shall transmit a copy to General Cushing for his information, as well as for the purpose of accurate verification of the text of the letters, if this be practicable.

I am very credibly assured, through other sources, that the payment of the sum promised to be paid to Great Britain in August last had not been made up to the 7th instant.

I have the honor to be, your obedient servant,

HAMILTON FISH.

The PRESIDENT.

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[Inclosure.]

*The chargé d'affaires of Great Britain to his excellency the minister of state.*

MADRID, August 5, 1874.

SIR: Having communicated to the Earl of Derby the desire of your excellency that Her Majesty's government should, for the moment, delay agitation of the claims relat-

ing to the *Virginus*, I have received instructions from his excellency reminding that many months have already elapsed since the execution of the British subjects captured on board of the said steamer, and that the families of the persons executed have represented in several instances that they were in misery.

The last consideration, I am sure, will have weight in the mind of your excellency, as well as in that of the Spanish government.

Her Majesty's government has instructed me to represent that however much it does not desire to augment the difficulties of the Spanish government, yet it cannot permit that these claims should be postponed indefinitely, and therefore trusts that your excellency will have the goodness to give me a decisive promise that this matter will be arranged at a specified date, and not a very distant one.

I beg your excellency to receive, &c.

H. G. MACDONELL.

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*The minister of state to the chargé d'affaires of Great Britain.*

MADRID, August 14, 1874.

DEAR SIR: I have received the note of your lordship, dated 5th instant, in which, by instruction of Lord Derby, your lordship has the goodness to represent to me that, many months having elapsed since the deplorable event of the *Virginus*, the families of the British subjects captured on board of her, and executed at Santiago de Cuba, had reiterated their solicitations to Her Majesty's government, in order to obtain some indemnity that should alleviate their misfortunes.

The British government is not ignorant of the motives which have until now obliged the government of Spain not to refuse, but to postpone, the arrangement of the respective indemnity to the British subjects; but, as your lordship very justly supposes in your note, the consideration of the miserable state in which the families of those unfortunates are placed can have no less weight in the mind of the Spanish government, and will induce it to anticipate the time when the above-mentioned families shall receive, in a formal and definite manner, some amount of money.

To this end the executive power of the Spanish Republic will, without prejudging the foundation of this matter, have no objection to give timely orders that an amount be forwarded for distribution among the families of the British subjects captured on board the *Virginus* and executed at Santiago de Cuba, reserving to itself the option of sending as much as necessary until the total amount of the indemnity, to be agreed upon by both governments, is completed, when the principal question shall have been settled in this manner.

Your lordship can, if you think it convenient, inform the government of Her Britannic Majesty of this proposition, which has been inspired by the best desire not to delay the sending of assistance to those interested, without, however, precipitating the official course indispensable for proper settlement of the question which is before us.

I avail myself, &c.

AUGUSTO ULLOA.

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*The chargé d'affaires of Great Britain to his excellency the minister of state.*

MADRID, August 15, 1874.

SIR: I have to thank your excellency for the prompt reply which you have kindly made to the communication I had the honor to address you at date of 5th instant, and in consequence of which I hasten to inform your excellency that I have been authorized by the government of Her Britannic Majesty to accept the amount deemed just as indemnity to the British subjects captured on board the *Virginus* and subsequently executed in Havana.

Being in accord upon this point, I have the honor to inform your excellency of the total amount of the claim made by the government of Her Britannic Majesty in favor of those injured by that event.

The number of individuals executed amounts to nineteen, among whom were nine colored and ten white men. For each of the colored men Her Britannic Majesty's government claims three hundred pounds, (£300,) and for each of the white men five hundred pounds, (£500,) which makes a total of seven thousand seven hundred pounds, (£7,700,) it being understood that, in case no relative of the victim presents himself to establish his claim, or should not prove his right within a reasonable time, the amount paid in his favor to the government of Her Britannic Majesty shall be immediately refunded to the Spanish government.

In submitting the foregoing figures to the consideration of your excellency, I have no doubt of receiving a favorable reply, trusting that the Spanish government, guided by its elevated sentiments of justice, will be in accord with the government of Her Britannic Majesty, and consider as just and equitable the amount fixed as indemnity.

I avail myself, &c.,

H. G. MACDONELL.

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*The minister of state to the chargé d'affaires of Great Britain.*

MADRID, August 13, 1874.

DEAR SIR: I have received the note of your lordship, dated 15th instant, by which you have the goodness to inform me, in reply to that I had the honor to address you on the 14th instant, that your lordship is authorized by the government of Her Britannic Majesty to accept the proposition presented by me in the name of the executive power; a proposition to furnish the sum agreed upon by both governments, in order that the same be, in the nature of an advance, distributed among the families of the British subjects captured on board the *Virginus* and executed at Santiago de Cuba. Your lordship adds, in the note to which I have the honor of replying, that the number of these unfortunates amount to nineteen, of whom ten are white men, and the remaining nine colored, the government of Great Britain deeming it fit to fix the indemnity at the amount of five hundred pounds (£500) for each of the individuals of the white race, and at three hundred pounds (£300) for each of the colored, resulting in a sum-total of seven thousand seven hundred pounds, (£7,700) which the Spanish government is to furnish for the object agreed upon.

The executive power consents on its part to the amount fixed, and will give timely orders, through the minister of finance, for the immediate transfer of six thousand seven hundred pounds (£6,700) in London, to be placed at the disposal of Her Britannic Majesty, being prepared to forward the remaining thousand pounds to make up the total amount of seven thousand seven hundred pounds (£7,700) when the subject shall have been definitely terminated, in accordance with the proposition of my note of the 14th instant, the government of Great Britain, on its part, agreeing to refund to the Spanish government the portion or portions of those individuals, respectively, whose relatives should present no claim, or not clearly establish their right to receive the indemnity within a reasonable time.

I avail myself, &c.,

AUGUSTO ULLOA,  
*The Minister of State.*

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No. 571.

The exact text of the above correspondence, and the other correspondence at the time on this question, appears in British Parliamentary Papers, Spain, No. 1, (1875,) as follows:

No. 1.

*The Earl of Derby to Mr. Macdonell.*

FOREIGN OFFICE, August 13, 1874.

SIR: On the 10th instant I received from you a telegram informing me that the Spanish government had forwarded to you a project of a note, expressing their willingness to pay, as an advance, such sum as might be claimed by Her Majesty's government for the relief of the families of the British subjects taken on board the *Virginus* and executed at Santiago de Cuba; but that, while the American claims are still pending, the Spanish government do not wish to admit the principle involved in the matter.

I have now to instruct you to state to the Spanish minister for foreign affairs that Her Majesty's government accept the arrangement proposed by his excellency, and you will add that Her Majesty's government consider the following would be a fair amount for the Spanish government to pay:

To the family of each colored man, of whom there were nine, £300, making £2,700.  
To the family of each white man, of whom there were ten, £500, making £5,000.  
Total, £7,700.

You will also state, that in any case where no near relations of one of the persons executed come forward to make a claim, or in case any alleged relatives fail to prove their claim within a reasonable time, the money paid on account of such claim shall be repaid to the Spanish government.

The substance of the above instructions has already been sent to you by telegraph.

I inclose, for your information, a copy of a memorandum, showing the names of the British subjects in question, and the information regarding each of them in possession of this office.

I am, &c.

DERBY.

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No. 2.

*Mr. Macdonell to the Earl of Derby.—(Received August 23.)*

[Extract.]

MADRID, August 19, 1874.

In accordance with your lordship's instructions, I addressed a note to the minister of foreign affairs, copy of which I have the honor to inclose, informing his excellency that Her Majesty's government could admit of no further delay in the settlement of the claims arising out of the capture and subsequent execution of the British subjects on board of the *Virginus*.

In delivering the above note to Señor Ulloa, I expressed the hope that he would consult with his colleagues as to the best mode of settling this question, which, under the circumstances specified in my note, admitted of no further postponement.

Señor Ulloa again assured me that the Spanish government were most desirous to see this affair brought to a close, so far as Her Majesty's government were concerned, but that unfortunately it was not in the power of the Spanish government to act as promptly as your lordship desired; that, owing to the United States Government having also an interest in this matter, the Spanish government would find itself in an embarrassing position, were it to establish a precedent by favoring the English claimants; but the different claims and counter-claims between the United States and Spain were now under consideration, and that if Her Majesty's government would be good enough to postpone the settlement of their claims for a short time longer, he could give me the positive assurance that as soon as the council of state re-assembled (at the end of September) the payment of the indemnity would immediately be effected.

I expressed great regret at not being able to comply with his excellency's request; that your lordship's instructions on the subject were definite, and that all I could do was to submit to your lordship's favorable consideration any reasonable suggestion his excellency might make; but that steps must be taken to satisfy the just demands of the families of the sufferers.

After some discussion, I agreed to submit to your lordship the proposal, which Her Majesty's government have since accepted, and the acceptance of which I have notified to the Spanish government, viz. that a certain sum should be paid, under the name of an advance, for the relief of the families of the victims, without prejudice to the principle involved: and I availed myself of that occasion to acquaint Señor Ulloa with the amount of the indemnity claimed.

On calling upon the minister the following day, his excellency said that he considered the sum demanded by Her Majesty's government very large, and far more considerable than he had been led to anticipate.

I pointed out that it was far below the estimate of the Spanish government, as applied to the families of those who fell at the hands of the Carlists.

However, I thought I might venture to make the following arrangement, which has since been accepted by the Spanish government, viz. that the sum of £1,000, by which the Spanish government seem desirous of reducing the claim, should be held by them as the balance to be paid on the final settlement of this question; by this means Her Majesty's government will eventually receive payment in full of the total amount claimed.

Accordingly, Señor Ulloa has now addressed to me a note, informing me that orders have been given to the ministry of finance for the immediate payment to Her Majesty's government in London of the sum of £6,700, it being clearly understood that the balance of £1,000 shall be paid when the question of the *Virginus* claims shall have been definitely settled by the council of state.

In submitting the above arrangement to your lordship, I trust that your lordship will not be of opinion that I have gone too far in assuming the responsibility of accepting the modifications proposed by the Spanish government.

[Inclosure 1 in No. 2.]

*Mr. Macdonell to Mr. Ulloa.*

MADRID, August 5, 1874.

M. LE MINISTRE: Having reported to the Earl of Derby your excellency's desire that Her Majesty's government might defer for the present pressing for a settlement of the *Virginus* claims, I am instructed by his lordship to remind your excellency that many months have now elapsed since the execution of the British subjects taken on board the *Virginus*, and that in several instances the families of the persons executed are in distress. The latter consideration will, I am convinced, have full weight with your excellency, as well as with the Spanish government.

Her Majesty's government have desired me to add that, though they are most unwilling to add to the difficulties of the Spanish government, yet they cannot allow these claims to be postponed indefinitely, and I trust, therefore, that your excellency will be able to give me a decided promise that the matter shall be settled by a fixed and not too distant date.

I avail, &amp;c.

H. G. MACDONELL.

[Inclosure 2 in No. 2.]

*Señor Ulloa to Mr. Macdonell.*

[Translation.]

MADRID, August 14, 1874.

SIR: I have received your note of the 5th instant, in which, by instructions from Lord Derby, you state to me that many months having elapsed since the occurrence of the sad events connected with the *Virginus*, the families of the English persons captured on board of her and executed at Santiago de Cuba renew their requests to Her Majesty's government to obtain some indemnity for the relief of their misfortune.

The British government is aware of the reasons which have, up to this time, obliged the Spanish government not to refuse to arrange, but to put off the arrangement of this indemnity with regard to British subjects, but, as you very justly suppose in your note, the consideration of the present miserable state of the families of those unfortunate persons cannot but have an influence on the Spanish government and move them not to wait for the moment when, in a definitive and formal manner, the said families may receive some sum of money.

To that end, the executive power of the Spanish republic, without prejudging the essence of this matter, will have no objection to give orders for handing over a sum of money for distribution among the families of the British subjects captured on board the *Virginus* and executed at Santiago de Cuba, reserving the delivery of what may be necessary for the completion of the whole amount of the indemnity that may be agreed upon between the two governments when the principal question may have been definitely settled in that sense.

You can, if you think fit, bring this proposal to the knowledge of Her Britannic Majesty's government, inspired as it is by the strongest wish not to delay the sending of succor to the parties interested, without precipitating the official course indispensable for coming to a right decision in the present question.

I avail, &amp;c.

A. ULLOA.

[Inclosure 3 in No. 2.]

*Mr. Macdonell to Mr. Ulloa.*

MADRID, August 15, 1874.

M. LE MINISTRE: I beg to thank your excellency for the ready acknowledgment of the communication I had the honor to address to you on the 5th instant, and I hasten to inform your excellency in reply that I have been authorized by Her Majesty's government to accept an advance on the sum which they deem due, as compensation, to the families of the British subjects captured on board the *Virginus* and subsequently shot at Santiago de Cuba.

This point having been settled, it now becomes my duty to acquaint your excellency with the total amount claimed by Her Majesty's government on behalf of those who suffered on that occasion. The individuals executed numbered nineteen, of whom nine were men of color, and ten were white men. For the colored men Her Majesty's gov-

ernment claim of £300 sterling each, and for the white men £500 sterling each; which constitutes at total of £7,700 sterling, it being clearly understood that in the event of no near relative of these men coming forward to establish a claim, or failing to substantiate it, within a reasonable period, the amount paid to Her Majesty's government on behalf of such individual or individuals shall be forthwith restituted to the Spanish government.

In submitting the above figures to your excellency, I have no hesitation in looking forward to a favorable reply, confident that the Spanish government, guided by their high sense of justice, will readily agree with the government of Her Majesty in considering the amount of compensation claimed both fair and equitable.

I avail, &c.

H. G. MACDONELL.

[Inclosure 4 in No. 2.—Translation.]

*Mr. Ulloa to Mr. Macdonell.*

MADRID, August 18, 1874.

SIR: I have received your note of the 15th instant, in which you state to me, in answer to the note which I had the honor of addressing to you on the 14th, that you are authorized by Her Britannic Majesty's government to accept the proposal made by me in the name of the executive power, to give the sum to which both governments might agree, for distribution, in the light of an advance, among the families of the British subjects taken on board the *Virginus* and executed at Santiago de Cuba.

You add, in the note to which I have the honor to reply, that as there were nineteen of those unfortunate persons, of whom ten were white men, and the other nine were men of color; and as the British government think that they ought to fix, as the rate of indemnity, the sum of £500 sterling for each white man, and £300 for each man of color, the sum total would amount to £7,700, to be given by the Spanish government for the purpose agreed upon.

The executive power of the nation agree, on their side, to the sum fixed, and will give the necessary orders, through the ministry of finance, so that £6,700 may be at once placed in London at the disposal of Her Britannic Majesty's government, and the remaining £1,000, wanting for the completion of the whole sum of £7,700, will be handed over when this matter shall be definitely settled according to that which is proposed in my note of 14th instant; the British government promising, in their turn, to re-imburse to the Spanish government the sum or sums corresponding to those individuals whose relations may make no claim, or may not fully prove, within a reasonable time, their right to receive the indemnity.

I avail, &c.

A. ULLOA.

No. 3.

*The Earl of Derby to Mr. Macdonell.*

FOREIGN OFFICE, September 7, 1874.

SIR: I have received your dispatch of the 19th instant, inclosing copies of a correspondence with the Spanish minister for foreign affairs, from which it appears that orders have been given for the immediate payment to Her Majesty's government of £6,700, as compensation to the relatives of the British subjects taken on board the *Virginus* and executed at Santiago, and that a further sum of £1,000 will be paid when the question has been definitely settled by the council of state.

I approve your proceedings in this matter, as reported in your above-mentioned dispatch, and I have to instruct you to express to Señor Ulloa the satisfaction with which Her Majesty's government have learned that their proposals for the settlement of the question have been accepted by the government of Spain.

I am, &c.,

DERBY.

No. 4.

*Mr. Layard to the Earl of Derby.—(Received December 5.)*

MADRID, November 25, 1874.

MY LORD: Señor Ulloa expressed the greatest surprise when I told him two days ago that the indemnities to the families of the British subjects taken on board the

Virginus and executed at Santiago had not been paid to your lordship. I could scarcely persuade him that such was the case. He said that he would go at once to the minister of finance and ask for an explanation. In the evening he informed me that he had seen his colleague on the subject, and that peremptory orders would be given on Wednesday (to-day) for the payment of the money without further delay. I trust, therefore, that your lordship will now have received it, or that M. de Comyn is prepared to hand it over to you.

I have, &c.,

A. H. LAYARD.

No. 5.

*The Earl of Derby to Mr. Comyn.*

FOREIGN OFFICE, December 10, 1874.

M. LE MINISTRE: I have the honor to acquaint you that I have received a dispatch from Her Majesty's minister at Madrid, dated the 25th ultimo, reporting that he had been informed by Señor Ulloa, two days previously, that peremptory orders would at once be given for the payment to Her Majesty's government of the indemnities due to the relatives of the British subjects who were shot at Santiago de Cuba in November, 1873; and I now beg to request that you will have the goodness to inform me whether you have received any instructions from your government in the matter.

I have, &c.,

DERBY.

No. 6.

*Mr. Comyn to the Earl of Derby.—(Received December 16.)*

[Translation.]

LONDON, December 14, 1874.

MY LORD: In conformity with the orders received from my government, I have the honor of inclosing herewith a check drawn with this day's date upon Messrs. Frederick Huth & Co., of this city, to the order of your excellency as principal secretary of state for foreign affairs, for the sum of £6,700 sterling, agreed upon for the settlement of the affair of the steamer Virginus.

I beg that your excellency will be pleased to acknowledge the receipt of the said sum.

I have, &c.,

JUAN S. COMYN.

No. 7.

*The Earl of Derby to Mr. Comyn.*

FOREIGN OFFICE, December 18, 1874.

M. LE MINISTRE: I have the honor to acknowledge the receipt of your letter of the 14th instant, inclosing a check on Messrs. Huth & Co., of this city, to my order, for the sum of £6,700, on account of the claims of the families of the British subjects taken on board the Virginus and executed at Santiago de Cuba in November, 1873.

I have, &c.,

DERBY.

No. 8.

*The Earl of Derby to Mr. Layard.*

FOREIGN OFFICE, December 19, 1874.

SIR: I transmit to you herewith a copy of a note from the Spanish minister at this Court,\* inclosing a check for £6,700, on account of the claims of the families of the British subjects executed at Santiago de Cuba, in November, 1873, for participation in the Virginus affair.

I also inclose a copy of the answer which I have returned to Señor Comyn.†

I am, &c.,

DERBY.

\* No. 6.

† No. 7.

No. 572.

*Mr. Cushing to Mr. Fish.*

[Telegram.]

MADRID, November 25, 1874.

FISH, *Secretary of State, Washington:*

In private note dated yesterday, minister of state, after complaining of unfairness and ill effects of article on Virginius question in the newspapers, says, in substance, that the Spanish government is disposed to concede to the United States indemnification in every respect similar in signification and limits to that granted to England, providing that stipulation be made, as has been done with England, respecting the character of this resolution, and that beforehand shall be determined the several points which, in the affair of the Virginius, establish for Spain, with respect to the United States, different rights from those which exist in this matter with regard to England, being such rights as are clearly derivable from the acts and declarations of the United States. Spain will abide in all events by all the stipulations in protocol, and, in the improbable event of not reaching a direct accommodation, will have recourse to the arbitration stipulated therein.

I telegraph, literally, the material parts of the note, which contains strong expressions of solicitude and purpose of Spanish government to establish most friendly relations with President Grant.

CUSHING.

No. 573.

*Mr. Cushing to Mr. Fish.*

[Telegram.]

MADRID, November 27, 1874.

FISH, *Secretary of State, Washington:*

Interview with minister of state last night. He repeated and enlarged upon contents of private note. President decided in July to satisfy the claims of Great Britain and the United States. Delay in latter case produced by absence in the ministry of any official knowledge of its own of details in Cuba. Documents only received in last few days. Ministers of state and colonies diligently occupied now in preference to other matters in the preparation of propositions for submission to the United States. He doubts the possibility of consummating the negotiation in a week, but will spare no effort to hasten conclusion. On this and other considerations he prefers to continue the negotiation at Madrid. I feel confident of his sincerity and good faith for many reasons, but will promptly telegraph every suggestion or incident of possible information for the Department.

CUSHING.



No. 574.

*Mr. Fish to Mr. Cushing.*

[Telegram.]

WASHINGTON, November 28, 1874.

CUSHING, *Minister, Madrid :*

\* \* \* \* \*

In settlement, all of the crew not claimed by Great Britain, and for whom she did not receive indemnity, must be treated as American seamen. No less sum can be received for any than that paid England for white persons, namely, not less than twenty-five hundred dollars; captain, mate, engineers, purser, and doctor should be allowed more. Three of the passengers slain are supposed to have been American citizens, and must be allowed for same as others.

You will ask indemnity for detention and imprisonment and for losses sustained by those of the crew, and by passengers who are American citizens who were not executed. We understand the number of these to be fifteen of the crew, including two engineers and one assistant, and four of the passengers, nineteen in all.

FISH.

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 No. 575.
*Mr. Cushing to Mr. Fish.*

[Telegram.]

MADRID, November 30, 1874. (Received 12.30 p. m., Nov. 30.)

FISH, *Secretary of State, Washington :*

Instruction of twenty-eighth received, and will be punctually obeyed.

CUSHING.

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 No. 576.
*Mr. Cushing to Mr. Fish.*

[Telegram.]

MADRID, December 4, 1874. (Received December 4.)

FISH, *Secretary of State, Washington :*

Long note received from Ulloa at twelve last night, which discusses the legal questions from his point of view, but concedes indemnity to the United States on the same basis as to Great Britain, and also trial of local authorities implicated. Telegram of details in preparation.

CUSHING.

No. 577.

*Mr. Cushing to Mr. Fish.*

[Telegram.]

MADRID, December 4, 1874.

FISH, *Secretary of State, Washington:*

Mr. Ulloa argues, temperately and in direct response to my notes, to general questions: first, that of arrest on the high seas, and second, that of the true character of the ship's company, on both points citing legal authorities, and in the latter quoting dispatches of Mr. Seward. He then proceeds substantially as follows:

I would have liked to convince you that the fundamental motive Spain has had to consider those on the *Virginus* as pirates is not so very absurd nor unreasonable, and that, supposing Spain erred in so regarding them, she would have been induced thereto by eminent writers and authorities.

The terrible consequences entailed on some of the unfortunates on board, and which the orders of the executive arrived in Santiago too late to avert—the lines being cut by insurgents—could not but move Spain, situated between strict fulfillment of laws in special circumstances and sentiments of pity common to all, but which latter should be stifled by duty, and in defense of high interests.

That duty fulfilled, humane sentiments may now seek not to remedy an irreparable punishment, but to alleviate and console those who, although not sharing the crime, suffer consequences of the expiation imposed by the law.

Spain having proved her sincerity by granting large pecuniary relief to families of British subjects executed at Santiago, would fail in her just duty did she not act in the same way toward the families of American citizens captured and executed.

The indications in my note of August fourteenth prove that, in settling thus with England, no discrimination was thought of against the United States. You will please express conformity, so that payment may be made through Spanish minister at Washington, in same terms as accepted by England.

Regarding Burriel, Mr. Ulloa says substantially:

and proceeds as follows—

I have answered your notes, and showed our point of view, trusting that the Government of Washington will examine our arguments in a spirit of conciliation, in order to arrive at a direct settlement. But if my hopes fail, and the United States do not regard this affair as terminated, notwithstanding my declarations, all of which are favorable to the concord and better understanding of the two countries, then Spain will be prepared to submit the integral settlement of our differences to arbitration.

Minister concludes by reminding me that many of the differences between the two countries have arisen from violations of law committed by foreigners in the United States, and expresses hopes that, in the interests of both nations, no such occasions of difference may hereafter arise. In a private note Mr. Ulloa requests me to telegraph you the material contents of his official note, which I have done, but I think it important you should see the full text before taking any definite action.

CUSHING.

[For text of Mr. Ulloa's note see inclosure in Mr. Cushing's No. 177 post.]

No. 578.

*Mr. Fish to Mr. Cushing.*

[Telegram.]

WASHINGTON, December 7, 1874.

CUSHING, *Minister, Madrid:*

First. Telegram of December 4 received imperfectly. So far as understood, the first point in Ulloa's note seems to assert legality of capture of *Virginus* as to make acceptance of indemnity; under second point, an admission of the first, and to estop denial of lawfulness of capture.

Second. If arrangement for indemnity be reached, care must be taken that it carries with it no implication admitting any point which this Government has controverted with regard to the lawfulness of the capture or of the subsequent executions. If satisfactory indemnity be offered, not coupled with any admissions, implied or expressed, on these points, it will be received.

Third. On third point, Spain seems to claim that the investigation into conduct of authorities at Santiago must be made.

Fourth. The distinction between white and colored in the indemnity to England cannot be admitted as founded on color; but a discrimination resting on the relative rank and ages of the parties is proper, and this is the basis of the discrimination asked by this Government in favor of officers.

It is hoped that you may succeed in reaching a satisfactory settlement.

FISH, *Secretary.*

No. 579.

*Mr. Fish to Mr. Cushing.*

[Telegram.]

WASHINGTON, December 11, 1874.

CUSHING, *Minister, Madrid:*

If Spain will pay indemnities as indicated in my telegram of November 28, without any admissions or implications on the part of this Government, you are authorized to discuss and arrange details.

Should you have doubt on any point, you will refer to this Government, and before concluding a settlement you will submit its terms.

FISH, *Secretary.*

No. 580.

*Mr. Cushing to Mr. Fish.*

No. 156.]

LEGATION OF THE UNITED STATES,  
*Madrid, November 25, 1874. (Received December 18.)*

SIR: I inclose herewith translation and copy of the original of a note from the minister of state, marked "private," under date of November 24,

1874, and received this day, expressing the resolution of the Spanish government to make indemnity in behalf of citizens of the United States executed at Santiago de Cuba, on the same basis as in the case of the subjects of Great Britain, with proviso of previous explanation on some points of difference; and, in the absence of agreement in that respect, then at once to recur to arbitration.

It is the note of which the material parts were this day transmitted to you by telegraph.

I am, &c.,

O. CUSHING.

[Inclosure 1 in No. 156.]

*Mr. Ulloa to Mr. Cushing.*

[Private.—Translation.]

MINISTRY OF STATE, November 24, 1874.

MY ESTEEMED FRIEND:

I must, therefore, repeat to you that the Spanish government has been from the first disposed to concede to the United States an indemnification in every respect similar in its signification and in its limits to that which it has granted for the execution of the English subjects, provided that stipulation be made, as has been with England, respecting the character of this resolution, and that beforehand shall be fixed and determined the several points which, in the affair of the *Virginus*, establish for Spain, with respect to the American Republic, different rights from those which exist in this matter with regard to England. Those rights which are clearly derivable from the acts and declarations of the Government of Washington itself being determined, Spain will take satisfaction in proceeding with the United States as it has acted with England; and it gives me pleasure to make this known from now henceforth, being also able to confide to your nobleness and discretion that, all the eventualities which may present themselves to our rectitude being foreseen as they are in the protocol of November, 1873, Spain will not in any contingency depart from that which is stipulated in the said protocol, or, expressing myself in other terms, that in the improbable event of not arriving at a direct accommodation, we will have recourse to the arbitration stipulated in that document.

I believe that in these lines I have fully demonstrated to how high a point the Spanish government carries its conciliatory sentiments, and its desires to maintain with that of President Grant a worthy and cordial understanding founded in reciprocal esteem.

Within a very short time I will explain these indications, to which I have not before given an official form owing to the necessity of asking from Cuba reports and data, which I now fortunately possess complete.

I have, meanwhile, wished to anticipate to your clear intelligence a confirmation of our resolution, and to improve an occasion, as satisfactory as all have been, to again subscribe myself with the greatest consideration, your attentive and obedient servant,  
(Q. B. S. M.,)

AUGUSTO ULLOA.

His Excellency Mr. CALER CUSHING,  
*Minister of the United States.*

No. 581.

*Mr. Cushing to Mr. Fish.*

No. 177.]

LEGATION OF THE UNITED STATES,  
*Madrid, December 5, 1874. (Received December 24.)*

SIR: I inclose herewith translation of an official note from the minister of state, together with translation of a private note, both delivered at midnight of Thursday, the 3d instaut.

I content myself, at present, with calling your attention to certain expressions in the private note which tend to show that, while Mr. Ulloa considered it his duty to argue his side of the question in response to my several notes, nevertheless, in his understanding of the matter, the acceptance of his proposition, with such ultimate modification of it as you may propose, will constitute a definitive settlement of the whole controversy.

In fact, when taking into consideration the very positive tone of some of my notes to Mr. Ulloa, it seems to me that this note of his, constituting argumentative response to all mine, deserves to be regarded as calm and temperate in spirit and language, and conceived in the purpose of not keeping alive the controversy.

I have, &c.,

C. CUSHING.

[Inclosure in No. 177.—Translation.]

*Mr. Ulloa to Mr. Cushing.*

MINISTRY OF STATE,

*Madrid, December 3, 1874.* (Received December 3—12 night.)

SIR: On the 14th of August last, while answering the note which you were pleased to address me under date of the 21st of July, I had the honor to set forth to you the reasons which, against its will, prevented the Spanish government from satisfying, at that moment, the desires of the Government of the United States, by giving a definitive reply to the reclamations presented by you in consequence of the seizure of the steamer *Virginus* on the coast of Cuba. Among the causes of that enforced delay, the principal ones were the necessity under which the government was of hearing the authoritative opinion of the high consultive bodies of the state concerning such an important matter, and of completing in this ministry the detailed study of all the antecedents, with certain data, of which I awaited the collection, in order to form the exact and impartial judgment I desired before adopting a definitive resolution.

All the procedures which were counseled by the most careful prudence and by the desire to form a sound opinion having been followed, the Spanish government has now the satisfaction to answer with completeness the notes from your legation dated 26th and 27th of June, 21st of July, and 24th of September, of this year, and even the last, of the 30th ultimo, which has recently reached my hands, taking up the principal points of each, and of which I was not able to treat with the necessary opportuneness for the reasons indicated.

It is impossible to ignore the extremely grave importance attaching to this question, known as that of the *Virginus*, or the responsibility which the governments of Spain and of the United States have contracted in the eyes of their respective countries, taking upon themselves to acquire knowledge of the facts and submitting the settlement of their differences to the attentive examination of the executive power, the zealous but dispassionate guardian of the honor and of the rights of the nation which it represents.

Fortunately, everything leads to the hope that both the government of Madrid and the Cabinet at Washington, inspired solely by the purest sentiments of justice and of equity, have no insuperable obstacle to encounter in reaching an honorable agreement worthy of the two great nations, who have been ever united by the closest ties of friendship, and who equally contemplate in their progress and in a lasting peace the realization of their present welfare and their aspirations in the future.

But still, in order that one and the other government, starting from so lofty a point of view and without abandoning the defense of the high interests which they have in charge, may succeed in coinciding in a solution equally acceptable to all, it would be necessary that the one as well as the other, yielding somewhat of that which they may deem to be of strict right in their pretensions, or which they may hold to be unquestionable in their own estimation, should hasten to seek in equity and in general expediency the honorable and satisfactory decision which the inflexible precepts of strict or absolute justice could not vouchsafe to them without laborious efforts, and, perhaps, without painful moral sacrifices.

The Spanish government, anxious to succeed, by all legitimate and decorous means, in putting an end to such vexatious differences, will, for its part, not shrink from making those concessions and renunciations which do not imply abdication of the sovereignty and independence of the nation, or which might be construed as an

abandonment of the national dignity, provided that the Government of the United States, nobly co-operating to the same end, is disposed to make equal concessions under like reservations.

This solemn controversy being thus set upon practical ground, mutually advantageous from the point of view of a speedy and satisfactory conclusion without detriment to our respective national interests, nothing could supervene to hinder the realization of the friendly desires which animate alike the Spanish government and that of the republic of the United States, and their present governors would win the enviable honor of having brought to a happy conclusion this laborious conflict, without disturbance of the good relations which have ever existed between the two peoples, but rather strengthening the ties of amity and of cordial understanding which unite them.

The Government of the United States insists that it has never recognized the right of other powers to detain and visit, in free seas and in time of peace, the vessels which may carry the American flag, and that, relying upon the inflexibility of this principle, it is bound to consider the seizure of the *Virginus* as illegal and in violation of the international practices admitted among cultured nations.

Without pausing to examine how far it is expedient to attribute this inflexibility to international principles and rules which do not directly emanate from the immutable principles of right, and which need the sanction of time, of universal custom, and of general and explicit consent of nations, it will be sufficient to observe that the right of visit, by its own nature, is one of those which have been most subject to the vicissitudes of the times, to the influence of progress, and to the development of maritime commerce, rigor in its application having been always dependent upon circumstances, as it could not otherwise be. Referring ourselves only to the modern epoch, we see the United States combating it tenaciously prior to 1842 with respect to the abolition of the slave-trade, imposing their prohibition subsequently in the Ashburton treaty, yielding under certain conditions in 1861 for reasons which affected social interests of magnitude, and agreeing, lastly, to maintain a cruiser on the coasts of Africa to visit and search the vessels of the Union. I mean, by this, that whatever may be the rigor with which the United States assert the maintenance of that prohibition, nothing has opposed, or is likely to oppose in future, the modification of its conditions according to circumstances, an inflexible rigidity not being essential, as it is not for the objects of the precept. Laudable is the object for which the right of search is denied in time of peace; plausible and meritorious is the desire to protect the freedom of the seas from the abuses of force, and to shelter the commerce of all nations from the vexations and the prejudices which might be inflicted thereon by the arbitrariness of the stronger power. But shall we not find some practical inconvenience in the exaggerated limitation imposed upon this right of visitation? Could there not be conflict among the principles that support and recommend it, and other legitimate rights which merit consideration, and which ought not to suffer or be disparaged?

The right to inquire the nationality of a merchant-vessel, and even to board it in certain cases, on the high seas, has been always regarded as a means of exercising maritime police, and of protecting the security of commerce between civilized nations. But as the right of visit is a limitation set upon the freedom of the seas, which not only does not restrict it, but rather guarantees and protects it, the exaggerated and narrow conditions to which the United States seek to reduce it might result in converting the seas into a secure and inviolable asylum for the wrong-doer, who would choose that element as the field of his criminal undertakings. It is not to be deduced herefrom that, at any time, and for all motives whatsoever, the right of visit should be permitted as may suit the arbitrariness or the convenience of the war marine; but neither does it appear rational to exclude it decisively and absolutely under all circumstances, except during a state of war and between belligerents recognized as such. Neither natural law nor the law of nations can authorize, nor the independence of nations permit, that the enemies of a sovereign state can, with impunity, navigate the high seas, carrying soldiers and resources to the hosts of an enemy without the country menaced by such an invasion having the privilege of disturbing them, provided that they sail under the protection of a neutral flag and warily keep at a distance of three miles from the coast, even though it be known and demonstrated evidently that the object of their presence upon the sea is aggressive and hostile. An unconditional and absolute prohibition would, moreover, restrict, if not completely annul, the right of self-preservation and of self-defense, which is a right with respect to other countries, and one of the most solemn and sacred of the duties of any state with relation to its citizens; or, as the eminent English juriconsult, Phillimore, says, "it is the first law of nations, as it is of individuals. A society which is not in a condition to repel aggression from without is wanting in its principal duty to the members of which it is composed and to the chief end of its institution." The same writer and others, Wheaton, Halleck, not less illustrious among the American authorities, concede to the right of defense the first place above all other rights, and agree that it is pre-eminent and

\* Phillimore, *International Law*, part III, chap. X, paragraph CC, XI, (cc.)

superior to that of the inviolability of territory ; so that in case of conflict it should be the first to be sustained, even though at the expense of the second.

If we consider the prudent and sufficiently guaranteed exercise of the right of visit (a right of which the United States themselves have at times made use under grave circumstances) as the only measure capable of preventing, in given cases, the perpetration of unlawful attacks against the security of a legitimately constituted state, it should not be governed by the intransigence and the inflexibility which it is sought to attribute to an international law having for its supreme object the protection of the liberty of commerce in good faith and the free transit of the seas. And, in any case, it does not seem just to appeal to the inviolability of such a principle, in order to cover with an immunity established in favor of peaceful and honest commerce, the criminals who carry war and desolation to the hospitable shores of a friendly power, and which would even extend to pirates, in whose extirpation all the nations of the globe are interested. And when legitimate governments, accidentally engaged in stifling an intestine rebellion, are deprived of the power of detaining a well-known vessel which, setting sail from a foreign port, goes to consummate a piratical enterprise, pompously and insolently announced beforehand by the filibuster press, to what sort of recourse or to what manner of preventive measures would it be lawful to resort?

If, on the other hand, we pause to deduce the necessary consequences which flow from this prohibition so energetically sustained by the Government of the United States, it would result that, in the concrete case of which we are treating, the Cabinet of Washington would have nothing to object to in the fact of the visit of the *Virginus* by a Spanish cruiser on the high seas, if the insurrection which exists in the island of Cuba were a formal war solemnly declared, while now it finds cause to reclaim and protest with all its might in the case of a measure, executed by the legitimate government of an allied nation, recognized as such, against its rebellious subjects. In this manner, although against the will and the best intentions of the American Government, it would admit of demonstration that the duties which international law imposes on the Cabinet of Washington, supposing belligerency between the Spanish troops and the rebels risen in arms, would be more directly obligatory upon it, and would be more efficacious in their means and results, than those which are demanded, apart from a state of belligerency, by good international relations, by the maintenance of domestic peace, and by the legitimate and justifiable repression of subjects in insurrection against the mother-country.

As you will observe, the indiscreet limitation of the right of visit, apart from other extremely serious inconveniences, would establish an odious privilege against the neutral vessel in time of war and in favor of the private aggressor, conceding to the latter an immunity which the former does not enjoy. The melancholy history of the *Virginus* was but too well known throughout Spanish America, and the recollection of her piratical enterprises was still fresh in the memories of the inhabitants of our Great Antilla. Registered in 1870 in one of the ports of the Union, and authorized thereby to fly the American flag, she subsequently abandoned the United States and entered first into the service of the republic of Venezuela, and afterward into that of the chiefs of the Cuban insurrection, at whose cost she carried, although not always with equal good luck, men, arms, horses, and munitions destined to support the fratricidal struggle which drenches in blood that lovely province. And here we must add, with regret, that the repeated piratical excursions of the *Virginus* were carried into effect without being reached or impeded either by the denunciations and reclamations of the representatives and consular agents of Spain in America, or by the protests of public opinion astounded before the impunity with which were realized attempts of such magnitude against public peace and morality and in violation of the most elementary duties imposed upon states by the sincere maintenance of good relations between friendly powers.

Neither is it needful to recall the attendant circumstances that occurred in her criminal expeditions, in which she displayed the chimerical flag of the republic of Cuba, nor that which took place at Cnraçoa, and at Puerto Cabello, nor that which happened at Aspinwall, nor the unscrupulous protection which, through error doubtless as to her true nationality, was afforded to the *Virginus* by the American officials, and especially by Captain Reed of the United States steamer *Kansas*. Purchased finally by the so-called insurgent general, Quesada, she was in an evil hour sent to carry to Cuba the luckless expedition arrested and disembarked at Santiago.

This was the vessel for which the commander of the *Tornado* was watching near the Cuban coast, and which the newspapers and the filibuster sympathizers of New York had saluted with emphatic speeches and with enthusiastic cheers when she left the shores of the Hudson. The course on which the *Virginus* was sailing, her sudden change of course on sighting the corvette *Tornado*, and the precaution of casting overboard during her flight various articles of the cargo, left no room for doubt as to the identity of the filibuster steamer. There was no question, therefore, of a simply suspected vessel, the search of which might have presented more or less probabilities respecting her ownership and the inoffensiveness of her intentions. There was no

possibility of an error which might have resulted in the inconveniences and the unwarranted prejudices of an inutile detention. It was a foregone conclusion, and the result proved it.

After the official declaration made by the Government of the United States, in conformity with the opinion of the learned Attorney-General, in which that worthy magistrate stated that the *Virginius*, at the time of her capture, carried the American flag illegally, it would be idle to pause to examine the question of the flag, already officially decided by the Government of Washington, in view of the numerous testimonies and proofs presented by the minister plenipotentiary of Spain, Señor Polo.

Given this state of things, it is clear that no offense whatever could have been committed against the American flag in the detention and seizure of a vessel which carried it at her mast-head unduly and without right thereto, and in virtue of an illicit and punishable fraud. Nay, more, still less could an injury have been done, by the act of seizure, to the crew and passengers, since they were not protected at that time by any legitimate and recognized flag, and, therefore, application could not be made to them of the legal fiction that the deck of a vessel in free waters constitutes a part of the territory of the nation to which she belongs.

It being proved to the satisfaction of the United States that the *Virginius* was not American, the query is suggested as to what may be the nationality of a ship which carries no legitimate flag and is not in possession of legal documents to accredit her character. All mercantile legislation and naval ordinances deny in general to foreigners the right to acquire merchant-vessels within the territory, and even the right of commanding them, without being subject to certain conditions. So, therefore, the *Virginius* can have no other nationality than that of her owner.

In the preamble to the important document subscribed by the Attorney-General, to which I have already made reference, after citing the declarations of several individuals who affirm that that vessel was the property of the Cuban Quesada, the worthy magistrate adds, textually: "Nothing appears to weaken the force of this testimony, though the witnesses were generally subjected to cross-examination; but, on the contrary, all the circumstances of the case tend to its corroboration." It is, moreover, confirmed by the numerous documents and affidavits presented by our minister in Washington, without anyone having a doubt, that the *Virginius* was acquired by the so-styled General Quesada, and probably, also, by several other insurgents, likewise sons of the island of Cuba, who paid for the vessel out of their own resources.

The question, therefore, respecting the ownership of the *Virginius*, which had at first presented itself as the occasion of lengthy and vexatious debates in the diplomatic field, has lost its gravity, and now offers itself to the consideration of the two governments interested under the simple proportions of a question of law.

It would be derogatory to your recognized erudition to remind you of the legal principles by which persons and things found within the territory of an independent and sovereign nation are subject to its jurisdiction wherever found, whether upon the ocean or in foreign dominions, without there existing the least exception to this rule respecting the subjects of the country. Spain, consequently, has not violated any foreign right in capturing on the open seas, by means of one of her naval vessels, a ship of which the ownership belonged to one or more of her subjects, without the party making the seizure incurring any responsibility other than that which may be required of him by his natural chiefs, conformably with the domestic laws of the country.

From what I have thus far brought to your attention, I believe that I have shown:

1st. That in the act of the seizure of the *Virginius*, Spain violated no foreign territory, since she effected the capture in that which is considered common to all nations; that is, on the high seas.

2d. That she has not compromised the free navigation of the seas, since her cruiser set out in search of the *Virginius*, and had no necessity for detaining her or visiting her before the seizure, since the maneuvers of the latter upon sighting the *Tornado*, her change of course, her casting her cargo overboard during her flight, and other circumstances strongly suspicious, confirmed the belief that she was the awaited filibuster vessel.

3d. That Spain has caused no prejudice to maritime commerce, since the *Virginius* was not a vessel dedicated to lawful traffic, but to the illicit and punishable transportation of contraband of war, destined to assist the insurrection in Cuba, and that her ownership could not be legally claimed by a third power.

The examination as to the seizure of the *Virginius* having been submitted to the competent tribunal, the judgment declaring her good prize is still pending the report of the council of state, and, as soon as it receives the approbation of the government, I shall have the honor to acquaint you therewith, in order that you may be pleased to request the appropriate instructions from the Government of the United States with respect to the restoration of the vessel in question, or the payment of her value in case she shall have disappeared, to our representative in Washington, in consequence of the declarations of the American Government with respect to her nationality, to the verdict of the prize-court, and to having fulfilled the object and conditions with which



she was surrendered by the authorities of Cuba to the Government of the United States.

We have now to examine the status, in the eyes of the law, of the persons of different nationalities who were found on board of the *Virginus* when she was captured.

The Government of the United States rejects the qualificative of "pirates" which has been applied to them in official documents by several Spanish functionaries; and you yourself, in your note of the 24th of September, not merely find it erroneous and inexact, but hold it to be absurd. This is not the most opportune moment in which to trouble your attention by burdening this long note with citations and texts from eminent authors, with which I might, perhaps, succeed in proving the contrary, founding my reasoning upon the important modifications introduced by international law on this point. It is true that the older writers, in the first dawnings, so to speak, of science, considered as essential certain circumstances and the concurrence of determinate acts to qualify as piracy the offenses consummated on the seas, and which constituted the dividing-line between the corsair and the pirate. One of those circumstances was the most characteristic, the *animus furandi*, proved in the crew of the vessel, and there were others which it is not necessary to recall. According to modern international law, which is less casuistical, no doubt, it is sufficient to accuse a ship of the crime of piracy that a purpose be proven on the part of her officers and crew to destroy the shipping of foreign nations which are not at war, to cast their cargo overboard or sink it, and to devastate the coasts of a country, not *animus lucrandi*, or with intent to profit by such damage, but to satisfy the hatred or the vengeance of the aggressor, or with other equally criminal purpose. Such is the point of view of modern writers, even among the most uncompromising paladins of the freedom of the seas, such as Baron Cussy, Pinheiro, Bluntschli, Ortolan, and others. So, therefore, we may today qualify as piracy any violence whatever committed on the sea, or immediately adjacent thereto, by persons who do not represent any known state or nation, it being sufficient in this relation that the sea be the theater of the crime for international law to consider its authors punishable at the hands of any independent state.

The expedition of Narciso Lopez in 1850, which is well known to all, and which in many respects has great analogy to that of the *Virginus*, merited, jointly with the reprobation of all sober-minded men, the qualification of being a declared act of piracy; and in the English Parliament Lord Brougham, inquiring of the government if the fact announced by the press was true, expressed the desire that condign punishment should be imposed upon those execrable pirates, because, added the honorable lord, *these persons are pirates*. In the same opinion Lord Aberdeen concurred in the House of Lords and Mr. Disraeli in the House of Commons.

In this way also it was regarded, in the light assuredly of modern doctrine, by a most worthy and learned authority, to whom no one, and, least of all, the Government of the United States, can take exception—the honorable Mr. Seward, formerly Secretary of State. This estimable officer, in the first two years of the secessionist rebellion which had broken out in the States of the American Union, addressed various official dispatches to the maritime powers, in which he set forth in different forms, and maintained with great store of arguments, that the confederate cruisers were *pirates*, and should be treated as such by the governments of Europe, a theory which merited, besides, the approbation of the American Congress. The secessionists having been recognized as belligerents by different governments which had not taken into consideration the character of pirates attributed to them by the theories of Mr. Seward, the latter replied, protesting against the recognition, and declaring it to be an act contrary to good relations of friendship, and as a violation of international laws. It is not to be supposed, whatever may have been the sentiments and the duties which impelled the then Secretary of State to combat the secessionist rebels, that he attributed to them the *animus furandi*, or the exclusive intent of *pillage and plunder*, which, conformably with the ancient doctrine, are essential elements of the crime of piracy.

I would have wished to succeed in demonstrating to you that the fundamental motive which the Spanish government has had to consider the passengers and crew of the *Virginus* as pirates is not so very absurd nor so very unreasonable; and that, supposing that in this it had fallen into error, it would have been induced thereto by the weighty opinions of eminent writers and authorities, illustrious by their learning and by the elevated position reached by them in powerful nations, wherein welcome and tribute are paid to ideas of advancement and progress in social and political science.

The terrible consequences which the rash and criminal expedition of the *Virginus* has had for some of the unhappy persons who were on board—consequences which the executive power could not avert, being unfortunately received in Santiago de Cuba too late by reason of the interruption of the telegraph-lines by the insurgents—could not do less than move the generous sentiments of the Spanish government, so painfully situated between the strict fulfillment of the laws in special circumstances, and the impulses of humanity and of commiseration common to all honorable men, but which should be violently stifled before the imperious voice of duty and the defense of the high interests confided to the public powers.

That duty fulfilled, sentiments of humanity may still recover all their force, and endeavor to seek, not a remedy for an irreparable punishment, but alleviation and consolation for those persons who, without having had part in the commission of the crime, participate fatally in the terrible consequences of the expiation imposed by law.

The Spanish government, which has very recently proved the sincerity with which it professes these noble sentiments, by conceding a large pecuniary relief to the families of the English subjects captured in the *Virginus* and executed at Santiago, would fail in a duty of justice if it were not prepared to act in the same manner and in the same proportion with respect to the families of the American citizens who, being captured on the vessel in question, were afterward executed. The indications which, upon this point, I had the honor to make to you in my note of the 14th of August, are a proof that, in conceding that sum to the government of Her Britannic Majesty, that of Spain could not have had the intention of establishing an unjustified preference, nor even a difference, between two nations alike friendly to Spain and with equal claim to her consideration and sympathies. You may, therefore, be pleased to indicate to me your conformity on this point, in order to proceed to the payment of the corresponding sum in the same terms as those accepted by the British government, and which terms are contained in the two inclosures I send to you herewith.

It remains to me to answer, Mr. Minister, the last note which, under date of the 30th ultimo, you have been pleased to address me, and in which you express to me the desire of the Government of Washington to see the fulfillment of the article of the protocol of November 29, 1873.

I have made answer to the principal questions which have arisen in the matter of the *Virginus*, and set forth the point of view of the Spanish government, in the confidence that the cabinet of Washington will examine our arguments through the prism of conciliation and of the friendly sentiments which have inspired them, in order that a direct settlement may be arrived at between the two governments. But if, contrary to the hopes of the Spanish government, its desires are not realized, and on the part of that which you so worthily represent in this capital it be deemed that the case be not reached for regarding this affair as terminated, notwithstanding the declarations I have had the honor to make, all of which are favorable to the concord and better understanding of the two countries, then, complying with that stipulated by both nations in the before-cited protocol of the 29th of November of last year, we are prepared to submit the integral settlement of our differences with regard to the *Virginus* to the arbitration of the powers whose designation respectively corresponds to the Spanish government and to the Government of the United States.

The Spanish government believes it has demonstrated, through my channel, in the present note, the sincerity of its sentiments, and its firm purpose to maintain and draw closer the ties of friendship which bind Spain to the United States. The same sincerity causes it to appeal to the good faith of the United States, hoping that, both with reference to the present question and to the questions which may arise in the future, it will be borne in mind that, doubtless against the will of the Government of Washington, almost all the expeditions launched against the island of Cuba have set out from American ports, and that in the principal cities of the Union there exists a permanent conspiracy against the integrity of our territory, which makes public boast, in the press and in meetings, of its criminal intentions. It is not my object to enter on a discussion as to how far the efficacy of the domestic laws of that country reaches in preventing these aggressions against a friendly people. If I permit myself to make this observation, which you will appreciate at its just value, it is solely in order to fix the situation in which we are placed with respect to the United States, and to explain thereby the different conflicts which have occurred between the two nations. To the termination of these differences, once for all, our wishes are directed, and we trust that the same desires will animate the American Government, even though it only consults its commercial interests, which suffer so much by the prolongation of an insensate rebellion, which, notwithstanding the warmth given to it by its sympathizers in foreign countries, has shown its impotency for triumph, being fecund only in evils, perturbations, and ruin for the mother country.

I improve this occasion to repeat to you the assurances of my most distinguished consideration.

AUGUSTO ULLOA.

The MINISTER PLENIPOTENTIARY  
Of the United States.

No. 582.

*Mr. Fish to Mr. Cushing.*

No. 108.]

DEPARTMENT OF STATE,  
Washington, December 30, 1874.

SIR: Your dispatch No. 177, with which was inclosed a copy of the elaborate note of Mr. Ulloa on the question of the *Virginus*, in reply to your communications, and of his private note forwarded at the same time, has been received.

I have read the note of Mr. Ulloa with interest and careful attention.

While I cannot agree with many of his assumptions and arguments, I must express satisfaction with its general tone and tendency, and with its temper and conciliatory expressions.

In this view, it is in marked contrast with some of the papers which have in the past emanated from the officials of Spain.

So far as the questions in difference are concerned, the general correspondence of this Department with Admiral Polo, and of yourself with the minister of state, fully present the views of this Government. Further argument would amount to a repetition.

In fact, Mr. Ulloa's note is to be taken as an answer to your communications, so as to complete the record, rather than as a paper presenting matter for reply.

I must, however, express my regret that Mr. Ulloa should have deemed it necessary, even if in deference to public feeling in Spain, to refer to the executions at Santiago as "the strict fulfillment of the laws in special circumstances," or as called for by "the imperious voice of duty," or to take from the moral effect of the indemnity proposed by characterizing the reparation as actuated by sentiments of pity consequent upon a "duty fulfilled," and as caused by a desire to alleviate the misfortunes of those who suffer through punishment imposed on others by the law.

I could have hoped that a review of all the facts attending the executions, and a consideration at this late day of those barbarous and cruel acts, happily without parallel, would have deterred the accomplished minister of state from the use of any expression, and from allowing himself to be committed to any view, tending to justify those executions.

While such expressions, accompanying an offer of settlement, may not prevent the acceptance of the offer, this Government would fail in its duty did it not signify its dissent from expressions tending to justify or apologize for these acts; and this may be done, as suggested by you, and approved in my telegram of December 11, by a counter-protest or a joint memorandum, precluding any inferences adverse to the position of this Government in regard to the acts complained of.

Without considering what supposed necessity may demand such an apparent justification, I cannot but believe that had Spain joined the civilized world in a denunciation of these executions, and had she long since visited prompt and effective punishment on the guilty parties, the moral support she would have gained thereby would have largely exceeded any corresponding detriment.

The instructions forwarded you by telegraph, and the absence of any observations from you upon the note in question, which, from your dispatch, may shortly be expected, make further reference thereto at this time unnecessary.

I am, &c.,

HAMILTON FISH.

No. 583.

*Mr. Cushing to Mr. Fish.*

[Telegram.]

MADRID, February 10, 1875.

FISH, Secretary of State, Washington :

Interview to-day with Castro.

\* \* \* \* \*

Satisfactory sum of indemnity free from condition of accountability required of England to be stipulated by immediate further interchange of officious notes.

CUSHING.

No. 584.

*Mr. Cushing to Mr. Fish.*

[Telegram.]

MADRID, February 16, 1875.

FISH, Secretary of State, Washington :

Negotiation rests on my note of eleventh to Castro, mailed same day. His reply sent to-day.

\* \* \* \* \*

CUSHING.

No. 585.

*Mr. Cushing to Mr. Fish.*

[Telegram.]

MADRID, February 16, 1875.

FISH, Secretary of State, Washington :

Diplomatic convention by interchange of notes completed to-day, to the following effect, namely :

First. Spain allows eighty thousand dollars in full of all indemnity.

Second. Allowance unconditional.

Third. All question of the hulk laid aside.

Fourth. Full assertion on my part of illegality of the acts complained of.

Fifth. Distribution to be made by the United States in their discretion.

Sixth. No posterior accountability as was required of England.

CUSHING.

No. 586.

*Mr. Cushing to Mr. Fish.*

[Telegram.]

MADRID, *February 21, 1875.*FISH, *Secretary of State, Washington :*

Important interview with Castro to-day, in which terms of final written agreement were practically settled, on bases, first, that indemnification is co-extensive with claims preferred; second, that no issue is raised as to the persons who may receive it, whether for executions or a detention; third, that time, place, and manner of payment shall be satisfactory; and fourth, that distribution shall be made by the President, in his discretion. I hope to cable text of agreement by Tuesday.

CUSHING.

No. 587.

*Mr. Cushing to Mr. Fish.*

[Telegram.]

MADRID, *February 21, 1875.*FISH, *Secretary of State, Washington :*

My note to Castro is as follows:

MADRID, *February 11.*

[Confidential.]

*Mr. Minister :*

MY DEAR SIR: I have the honor herewith, in respectful accordance with a suggestion made by your excellency during our conversation of yesterday, to submit my views regarding the precise sum of indemnity proper to be allowed to the United States in the matter of the Virginus. Your excellency will observe in reading the note of Mr. Ulloa to Mr. Macdonell, of the 6th of August, that the sum paid to Great Britain in this behalf purports to be an advance or partial payment, leaving the total amount to be fixed by future negotiation.

Now, as your excellency has already, induced by laudable desire of concord, agreed that the sum allowed to the United States shall be unconditional, I propose, in the same desire of concord, that it shall be definitive and without having the door remain open for further reclamation in the premises, which proposal cannot but be acceptable to the Spanish government. Moreover, the arrangement made with Great Britain comprehended another condition which, as I think, it is for the interest both of Spain and the United States to premit; that is, the engagement of Great Britain to account to Spain for the distribution of the sum in the first instance accorded. It seems to me that such a condition might lead to future causes of dispute which it would be better for our respective governments to prevent and avoid.

This point was much discussed by the tribunal of arbitration at Geneva, with the judicious conclusion that it was most advisable to decree a specific sum in gross to be paid by Great Britain, committing to the United States the national duty and the national responsibility of the equitable distribution of such sum among the several claimants without any accounting therefor to Great Britain. I propose, therefore, that the sum to be paid in the present case be a final one, and intrusted, in so far as regards the distribution thereof, to the discretion of the United States.

Our claim was based on the sum paid to Great Britain for each ordinary white man as a starting-point, but with exclusion of the lesser sum allowed for colored youths, and it proceeded on the calculation of an increased rate for officers, that increase not arbitrary, but measured by the relative rate of wages of officers and men in the steam-service.

In this respect, also, my judgment was guided by experience gained in the arbitral proceedings at Geneva.

The necessary result was a larger sum total than that offered to Great Britain. First, because no depreciatory discrimination for colored persons entered into my calculations; secondly, because it embraced a larger number of persons; and thirdly, a greater proportion of officers, including the captain.

In view of all which, I propose, as the lowest amount which will satisfy my Government, the sum of \$80,000, to cover all claims of the United States for pecuniary indemnity, in the matter, whatever they may be; and still more to facilitate the conclusion of the present provisional arrangement, I propose to leave the time of payment to be fixed in our official agreement, feeling sure, from what I have had the gratification of seeing of the spirit of justice, frankness, and good faith which animates your excellency, that we shall readily agree on this point. since you will not propose any delay unworthy of Spain or unacceptable to the United States. If your excellency shall be pleased to signify assent to these views, it will be my most agreeable duty to telegraph home that this painful controversy, transmitted to you by previous administrations, has, by our joint efforts, been at length concluded in a manner honorable to both nations and eminently conducive to a permanent good understanding between the respective governments.

I avail, &c.

His note to me reads thus :

MINISTRY OF STATE,  
*The Palace, February 15.*

[Confidential.]

MY DEAR SIR: In due time I received your excellency's letter of the 11th instant, which, to my deep regret, manifold and urgent occupations have not permitted me to answer sooner, as I should have desired, in order to respond duly to the friendly solicitude displayed by your excellency for the speedy and definitive settlement of the important affair which occupies us. I have, in compensation, the honor to be enabled today to inform your excellency, in the name of the government of His Majesty, of the full acceptance of the proposition of the Government of the United States, which fixes at \$80,000 the total of the sum to be paid by that of Spain for distribution among the families of the Americans shot in consequence of the capture of the *Virginus*.

In communicating to your excellency this conformity, I must add that, in treating of a Government so worthy of consideration as that of Washington, and of persons so worthy of respect as those who compose it, whatever the form in which this amicable settlement between the two cabinets had been effected, it would never have been my intention to propose that the Government of your excellency should give account of the manner in which the sum agreed upon was distributed, and much less having intervened so efficaciously in these negotiations one who, like your excellency, merits by his distinguished personal qualities the highest esteem of the government of His Majesty. This distribution, therefore, appertains exclusively to the Government of the United States, inspired by the upright and notable sentiments which animate it. It remains to me now to await with real impatience until, the representation of your excellency near His Majesty the King being regularized, we can in common accord formalize this agreement, due principally to the spirit of the friendly sentiments which exist between the two governments, and of which your excellency has been a faithful and most worthy interpreter in the course of the negotiations.

I am, sir, &c.

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No. 588.

*Mr. Fish to Mr. Cushing.*

[Telegram.]

WASHINGTON, *February 24, 1875.*

Have submitted to President your note of 11th, and Castro's of 15th, as received by cable. He approves of agreement as therein proposed. You will telegraph fact and date of signature, and, so soon as credentials are received and presented, will sign final agreement, and immediately telegraph the fact.

FISH.

No. 589.

*Mr. Fish to Mr. Cushing.*

[Telegram.]

WASHINGTON, *March 3, 1875.*

You are authorized to present credentials, if immediately thereupon final agreement will be signed.

\* \* \* \* \*

FISH.

No. 590.

*Mr. Cushing to Mr. Fish.*

[Telegram.]

MADRID, *March 9, 1875.*

Official agreement has been signed, substantially as telegraphed on the 2d. Credentials to be presented on the 10th.

CUSHING.

No. 591.

*Mr. Cushing to Mr. Fish.*

No. 312.]

LEGATION OF THE UNITED STATES,  
*Madrid, March 11, 1875. (Received March 29.)*

SIR: I inclose herewith an original of the agreement as signed on the 5th instant, for the settlement of the indemnity reclamations in the matter of the "Virginus," with the ratification thereof, as signed the day after my official presentation to the King.

\* \* \* \* \*

I am, &amp;c., &amp;c.,

C. CUSHING.

[Inclure In No 312.]

## AGREEMENT.

In consideration of the reasons set forth and the declarations made reciprocally in various conferences to that effect had between his excellency Mr. Caleb Cushing, representative of the United States, and his excellency D. Alejandro Castro, minister of state, as also of the notes which have passed between them, and, desiring at the same time to put an end, by means of an equitable and friendly accord, to the reclamations presented by the Government of the United States, in consequence of what occurred at Santiago de Cuba, in regard to the persons of the officers, crew, and passengers of the steamer "Virginus," it being understood that from these reclamations are to be excluded, in so far as respects the ship's company, all individuals indemnified as British subjects, and, with respect to passengers, including only six American citizens—

They have agreed:

First. The Spanish government engages to deliver to that of the United States the

sum of eighty thousand dollars in coin, or four hundred thousand pesetas, for the purpose of relief of the families or persons of the ship's company, and passengers aforesaid, of the "Virginus."

Second. The Government of the United States engages to accept the sum mentioned in satisfaction of reclamations of any sort, which, in the sense of personal indemnification in this behalf, might hereafter be advanced against the Spanish government.

Third. When the sum referred to in Article one, shall have been received, the President of the United States will proceed to distribute the same among the families, or the parties interested, in the form and manner which he may judge most equitable, without being obliged to give account of this distribution to the Spanish government.

Fourth. The payment of the eighty thousand dollars, or four hundred thousand pesetas, shall be effected by the Spanish government, at Madrid, in specie, and in three periods of two months each: Thirty thousand dollars, or one hundred and fifty thousand pesetas, for each of the first two installments, and twenty thousand dollars, or one hundred thousand pesetas, in the last.

Fifth. The present agreement will be ratified by both the undersigned, so soon as his excellency the representative of the United States shall have presented credential-letters which accredit him as minister plenipotentiary near His Majesty the King of Spain.

Done at Madrid, this twenty-seventh day of February, in the year one thousand eight hundred and seventy-five.

C. CUSHING .  
ALEJANDRO CASTRO.

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RATIFICATION OF AGREEMENT.

His excellency Mister Caleb Cushing, envoy extraordinary and minister plenipotentiary of the United States of America, and his excellency Don Alejandro Castro, minister of state of His Catholic Majesty, in fulfillment of the stipulation contained in the fifth article of the agreement provisionally signed by their excellencies aforesaid in this city, on the twenty-seventh of February last past, declared:

That his excellency Mister Caleb Cushing having yesterday presented the letter of His Excellency the President, which accredits him as the envoy extraordinary and minister plenipotentiary of the said States near His Majesty the King of Spain, they ratify, by the present document, all that is stipulated in each one of the five articles of which the above-mentioned agreement is composed.

In witness whereof, both the undersigned have signed their names and set their seals to the present declaration.

Madrid, the eleventh of March, of the year one thousand eight hundred and seventy-five.

The minister plenipotentiary of the United States of America,  
[SEAL.]

C. CUSHING.

The minister of state of His Catholic Majesty,  
[SEAL.]

ALEJANDRO CASTRO.

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No. 592.

*Mr. Cushing to Mr. Fish.*

[Telegram.]

MADRID, *March 12, 1875.*

Credentials presented the 10th; ratification signed the 11th, and sent the same day by express.

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CUSHING.



No. 593.

*Mr. Fish to Mr. Cushing.*

No. 152.]

DEPARTMENT OF STATE,  
Washington, April 6, 1875.

SIR: Your 312, containing the original of the agreement entered into between yourself and the minister of state as to the indemnity in the matter of the *Virginus*, dated February 27, and the ratification thereof, bearing date the 11th ultimo, has been received and laid before the President.

I am instructed to convey to you the President's approval of your proceedings, and his appreciation of the tact, ability, and judgment through which you have brought this tedious negotiation to a successful termination. In this approval of your proceedings I heartily join.

It may fairly be considered a real advance in diplomatic intercourse when an adjustment of such a dangerous and perplexing question, with the attendant feeling and the difficulties which have surrounded it, can be effected by as frank and open declarations on the one side, and admissions on the other, as are reported to the Department in your No. 238 to have taken place between yourself and Mr. Castro. \* \* \*

I am, &amp;c.,

HAMILTON FISH.

No. 594.

*Mr. Cushing to Mr. Fish.*

No. 349.]

LEGATION OF THE UNITED STATES,  
Madrid, April 16, 1875. (Received May 7.)

SIR: I inclose herewith annexed copy and translation of a note of this date from the minister of state, informing me of the determination of the Spanish government to anticipate payment of the indemnity-money in the matter of the "*Virginus*" by the immediate delivery of the whole of the first installment and of one-half of the second.

I shall to-morrow call at the treasury department, and, on receiving the money, remit the same immediately to Messrs. Morton, Rose & Co., as instructed by your telegram of the 7th instant, on the best terms attainable at Madrid.

\* \* \* \* \*  
I have, &c.,

C. CUSHING.

[Inclosure 1 in No. 349.]

*Mr. Castro to Mr. Cushing.*

[Translation.]

MINISTRY OF STATE,  
The Palace, April 16, 1875. (Received April 16.)

YOUR EXCELLENCY: I fulfill with pleasure the duty of announcing to your excellency that, according to information I have received from the minister of finance, there is

now current for collection and at your disposal a treasury order to the value of 225,000 pesetas, the amount of the first installment and half of the second of the indemnification in the "Vrginius" matter, which sum will be paid as soon as your excellency is pleased to present yourself to receive it.

The Spanish government, in anticipating a part of the second installment of the said indemnification, desires that the Government of the United States may see therein a proof of the consideration which is its due and a mark of deference to its representative at this court for the worthy and noble intervention he has had in this matter.

I improve this occasion to repeat to your excellency the assurance of my most distinguished consideration.

A. CASTRO.

The MINISTER PLENIPOTENTIARY of the United States.

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[Inclosure 2 in No. 349.]

*Mr. Cushing to Mr. Castro.*

LEGATION OF THE UNITED STATES,  
*Madrid, April 16, 1875.*

SIR: I have received with lively satisfaction your excellency's note of this date, announcing the intention of the government of His Majesty to anticipate payment of the indemnity stipulated by agreement of the 11th of March in the matter of the "Vrginius," and to that end inviting me to receive from the minister of hacienda a treasury order for the sum of 225,000 pesetas.

It does not become me to attribute this act in any degree to the personal considerations kindly suggested by your excellency. I regard it only in the light of a testimony of fact to the sincerity of the assurances given by His Majesty on the occasion of my official reception of his desire to maintain and strengthen the relations of good-will between our respective governments, in response to the similar assurances given by the President of the United States. In this sense, it will be my duty and my pleasure to transmit your note to my Government.

I embrace the present opportunity of repeating to your excellency the declaration of my most distinguished consideration.

C. CUSHING.

His Excellency THE MINISTER OF STATE.

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No. 595.

*Mr. Cushing to Mr. Fish.*

[Telegram.]

MADRID, *April 17, 1875.*

Payments anticipated. Forty-five thousand dollars to be delivered to-day.

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CUSHING.

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No. 596.

*Mr. Cushing to Mr. Fish.*

No. 356.]

LEGATION OF THE UNITED STATES,  
*Marid, April 21, 1875. (Received May 11.)*

SIR: In pursuance of the note addressed to me by the minister of state in the afternoon of Friday the 16th instant, of which copy is an-

nexed to my No. 349, I called on the minister of Hacienda the next day, Saturday the 17th, and he immediately issued direction for the delivery of an order on the Bank of Spain for the sum of 225,000 pesetas, (\$45,000.) which I received late on the same day, and receipted for according to copy and translation annexed.

\* \* \* \* \*  
I have the honor, &c.,

C. CUSHING.

[Inclosure 1 in No. 356.]

*Receipt and treasury warrant for 225,000 pesetas paid to Mr. Cushing April 17, 1875.*

[Translation.]

General direction of the treasury—Warrant office—Warrant of payment No. 203—No 1 of special registry—Operations of the treasury—First part of the account—General head, "Anticipated payments and funds advanced with obligation of repayment"—Special head "Ministry of state."

The general director of the treasury to the central treasurer:

Be pleased to note in account and satisfy to his excellency the minister plenipotentiary of the United States of America, Mr. Caleb Cushing, in the kinds of money expressed in the margin, the sum of two hundred and twenty-five thousand pesetas, on account of the four hundred thousand to which amounts the indemnification agreed upon for the relief of the families of the ship's company and passengers of the steamer "Virginus," captured in the island of Cuba in conformity with the order copied on the back hereof; bearing in mind that in order that the above-mentioned sum may be paid to him in account, the central accountant must register and note this warrant "before its payment be effected," and that the receipt must be afterward signed by the legal personality in whose favor it is issued.

Madrid, April 17, 1875.

JUAN LOREN.

*Classification of form of payment.*

Gold, silver, copper, bank-notes; in all two hundred and twenty thousand pesetas. Registered the 17th day of April, 1875, in which the payment was effected.

The central accountant,

FERNANDO FERNANDEZ.

Entered as No. 1247 of the diary of the accountant's office. Entered as No. — of the diary of the treasurer's office.

Received the aforesaid sum in the kinds of money specified in the margin.

The party in interest.

C. CUSHING,

*Minister of the United States of America.*

*Direction of the public treasury and general warrant office for payments from the state.*

By royal order of the 7th instant, in accord with the council of ministers, this direction-general is authorized, under the item of "Advances by the treasury," to the ministry of state, to pay to the Government of the United States of America the sum of four hundred thousand pesetas, amount of the indemnification agreed upon for the relief of the families of the ship's company and passengers of the steamer "Virginus" captured in the island of Cuba; in view thereof, this direction has ordered that on account of the said sum, and under the item mentioned, there be forthwith paid by the central treasury office to the minister plenipotentiary of the United States at this court two hundred and twenty-five thousand pesetas, of the execution of which in this manner will be pleased to give advice. May God guard you many years.

Madrid, April 15, 1875.

PY. JUAN LOREN.

To the central accountant.  
It is a copy. [Rubricated.]

No. 597.

*Mr. Fish to Mr. Cushing.*

[Telegram.]

WASHINGTON, April 22, 1875.

Was anticipation referred to in telegram seventeenth realized?

FISH.

No. 598.

*Mr. Cushing to Mr. Fish.*

[Telegram.]

MADRID, April 23, 1875.

Two hundred and twenty-five thousand pesetas received and remitted.

CUSHING.

No. 599.

*Mr. Fish to Mr. Cushing.*

[Telegram.]

WASHINGTON, April 23, 1875.

Anticipated payment taken as evidence of friendly dispositions, and strengthens hope of speedy adjustment of all outstanding questions.

FISH.

No. 600.

*Mr. Cushing to Mr. Fish.*

[Telegram.]

MADRID, May 5, 1875.

I have obtained payment to-day of balance of indemnity money, 175,000 pesetas, which will be remitted conformably to existing instructions.

CUSHING.

No. 601.

*Mr. Fish to Mr. Cushing.*

[Telegram.]

WASHINGTON, May 6, 1875.

You will express to Spanish government President's appreciation of the anticipated payments, and his satisfaction at the adjustment of this question.

FISH, Secretary.

No. 602.

*Mr. Fish to Mr. Cushing.*

No. 172.]

DEPARTMENT OF STATE,  
*Washington May 8, 1875.*

SIR: Referring to your telegrams, and to your No. 349, informing me that the Spanish government had anticipated the payment of the *Virginus* indemnity to the amount of 225,000 pesetas, and to your telegram of the 5th instant, stating that you had received 175,000 pesetas, being the entire amount of the indemnity remaining unpaid, I have to congratulate you upon the speedy and successful termination of this negotiation.

I have already expressed to you the appreciation entertained by the President and this Department of the tact and sagacity displayed by you in reaching an adjustment, and I am instructed to express the satisfaction of the President on learning of this final payment and of the disposition of this question.

You were instructed by my telegram of the 6th instant to express to the government of Spain the appreciation of the President at the course which that government had adopted, in not only fulfilling the engagement which had been entered into, but in hastening to remove the questions by an anticipation of payment.

I am, &amp;c.,

HAMILTON FISH.

No. 603.

*Mr. Cushing to Mr. Fish.*

No. 382.]

LEGATION OF THE UNITED STATES,  
*Madrid, May 13, 1875. (Received June 1.)*

SIR: I have the satisfaction to report that the final payment on account of the "*Virginus*," received by me on the 5th, as previously reported, has this day been remitted by me to London, by eight-day bills of Messrs. Bayo & Co. on Messrs. Murrieta & Co., and that thus the Spanish government, without availing itself of the six months' time stipulated in the agreement of March 11, has voluntarily discharged its entire obligation in two months, for the purpose of showing its good faith and its good-will toward the United States.

I have, &amp;c.,

C. CUSHING.