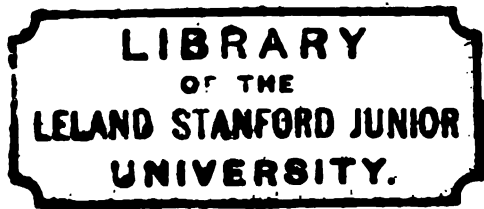


THE
WORKS
OF
DANIEL WEBSTER.

VOLUME VI

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DEDICATION
OF THE SIXTH VOLUME.

WITH the warmest paternal affection, mingled with deeply afflicted feelings, I dedicate this, the last volume of my Works, to the memory of my deceased children :

JULIA WEBSTER APPLETON,

beloved in all the relations of Daughter, Wife, Mother, Sister, and Friend ; and

MAJOR EDWARD WEBSTER,

who died in Mexico, in the military service of the United States, with unblemished honor and reputation, and who entered that service solely from a desire to be useful to his country and do honor to the State in which he was born.

“Go, gentle Spirits, to your destined rest :
While I, reversed our Nature's kindlier doom,
Pour forth a Father's sorrow on your tomb.”

DANIEL WEBSTER.

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EXCESSES COMMITTED AT NEW ORLEANS.

Mr. Webster to Don A. Calderon de la Barca, Minister of Spain to the United States.

Department of State, Washington, November 13, 1851.

THE undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Señor Don A. Calderon de la Barca, Envoy Extraordinary and Minister Plenipotentiary of her Catholic Majesty, of the 14th of last month, upon the subject of the excesses committed at New Orleans upon the house of the Spanish consul, and also on the property of certain individuals, subjects of her Catholic Majesty.

Mr. Calderon has written and acted on this occasion, as well as on others growing out of similar occurrences, with his accustomed zeal, as well as with fidelity to his government; and he has met, and will meet, on the part of that of the United States, an entire readiness to listen most respectfully to his representations, and to do all that honor, good faith, and the friendly relations subsisting between the United States and Spain may appear to demand.

The first rumor of the outrage at New Orleans induced the government of the United States to take immediate steps to become acquainted with the particulars. It was regarded as a case in which the honor of the country was involved; and, as Mr. Calderon has already been informed by this department, the Attorney of the United States for the District of Louisiana was instructed to cause inquiry to be made into the circumstances attending the occurrences, and to report the same to this department. The report of the District Attorney has been received, and a copy of it is now communicated to Mr. Calderon for his

information. It is accompanied, as will be perceived, by a statement of the Mayor of the city of New Orleans, whose duty, as well as whose inclination, led him to make himself acquainted with every thing which took place.

From these authentic sources of information, it appears that, on the morning of the 21st of August, the steamer "Crescent City" arrived at New Orleans from Havana, with intelligence of the execution of the fifty persons who were captured near the coast of Cuba. Mr. Brincio, the secretary of the Spanish consul, was a passenger in the steamer, and was understood to have been intrusted by the Captain-General with letters written by the persons who were afterwards executed to their friends in the United States. Instead of putting these letters into the post-office at once, on his arrival, he retained them, as was alleged. This occasioned an impression that he acted with great impropriety, and a report became current that the consul had refused to deliver the letters when requested. Written placards were accordingly posted up in the city, threatening an attack on the office of the Spanish newspaper called "La Union" during the ensuing night. This attack was probably precipitated by an extra sheet, issued from the office of that paper at half past two o'clock in the afternoon, giving an account of the execution of the fifty persons at Havana; as the attack was made between three and four o'clock the same afternoon, and before the public authorities were, or could be, prepared to prevent it. During the attack, however, no personal injury was offered to any one. Afterwards, attacks were made upon coffee-houses and cigar-shops kept by Spaniards. Between five and six o'clock, the same afternoon, Mr. Genois, the Recorder of the First Municipality, hearing that an assault was threatened on the consul's office, situated in that municipality, repaired thither, accompanied by some of the police. He found the streets filled with people, the doors of the office broken open, and seven or eight persons in the act of breaking and destroying the furniture. He commanded the rioters to desist, and they withdrew, after obtaining possession of the consul's sign, which they took to a public square, and there burnt. After the departure of the mob, the doors of the consul's office were fastened up by the officers, and the police retired, not apprehending that the attack would be renewed. Within an hour, however, the rioters re-

turned, forced their way into the office, destroyed all the remaining furniture, threw the archives into the street, defaced the portraits of the Queen of Spain and of the Captain-General of Cuba, and tore in pieces the flag which they found in the office. This is believed to be a true account of every thing material which took place.

The undersigned has now to say, that the executive government of the United States regards these outrages not only as unjustifiable, but as disgraceful acts, and a flagrant breach of duty and propriety; and that it disapproves them as seriously, and regrets them as deeply, as either Mr. Calderon or his government can possibly do. The Spanish consul was in this country discharging official duties, and protected not only by the principles of public and national law, but also by the express stipulations of treaties; and the undersigned is directed to give to Mr. Calderon, to be communicated to his government, the President's assurance that these events have caused him great pain, and that he thinks a proper acknowledgment is due to her Catholic Majesty's government. But the outrage, nevertheless, was one perpetrated by a mob, composed of irresponsible persons, the names of none of whom are known to this government; nor, so far as the government is informed, to its officers or agents in New Orleans. And the undersigned is happy to assure Mr. Calderon, that neither any officer or agent of the government of the United States, high or low, nor any officer of the State of Louisiana, high or low, or of the municipal government of the city of New Orleans, took any part in the proceeding, so far as appears, or gave it any degree of countenance whatever. On the contrary, all these officers and agents, according to the authentic accounts of the Mayor and District Attorney, did all which the suddenness of the occasion would allow to prevent it.

The assembling of mobs happens in all countries; popular violences occasionally break out everywhere, setting law at defiance, trampling on the rights of citizens and private men, and sometimes on those of public officers, and the agents of foreign governments, especially entitled to protection. In these cases the public faith and national honor require, not only that such outrages should be disavowed, but also that the perpetrators of them should be punished wherever it is possible to bring them to justice; and, further, that full satisfaction should be made,

in cases in which a duty to that effect rests with the government, according to the general principles of law, public faith, and the obligation of treaties.

Mr. Calderon thinks that the enormity of this act of popular violence is heightened by its insult to the flag of Spain. The government of the United States would earnestly deprecate any indignity offered in this country, in time of peace, to the flag of a nation so ancient, so respectable, so renowned, as Spain. No wonder that Mr. Calderon should be proud, and that all patriotic Spaniards of this generation should be proud, of that Castilian ensign, which, in times past, has been reared so high, and waved so often over fields of acknowledged and distinguished valor; and which has floated also, without stain, on all seas, and especially, in early days, on those seas which wash the shores of all the Indies. Mr. Calderon may be assured that the government of the United States does not and cannot desire to witness the desecration or degradation of the national banner of his country.

It appears, however, that in point of fact no flag was actually flying, or publicly exhibited, when the outrage took place; but this can make no difference in regard to the real nature of the offence, or its enormity. The persons composing the mob knew that they were offering insult and injury to an officer of her Catholic Majesty, residing in the United States under the sanction of laws and treaties, and therefore their conduct admits of *no* justification. Nevertheless, Mr. Calderon and his government are aware that recent intelligence had then been received from Havana, not a little calculated to excite popular feeling in a great city, and to lead to popular excesses. If this be no justification, as it certainly is none, it may still be taken into view and regarded as showing that the outrage, however flagrant, was committed in the heat of blood, and not in pursuance of any predetermined plan or purpose of injury or insult.

The people of the United States are accustomed, in all cases of alleged crime, to slow and cautious investigation and deliberate trial before sentence of condemnation is passed, however apparent or however enormous the imputed offence may be. No wonder, therefore, that the information of the execution, so soon after their arrest, of the persons above referred to, most of whom were known in New Orleans, and who were taken, not

in Cuba, but at sea endeavoring to escape from the island, should have produced a belief, however erroneous, that they had been executed without any trial whatever, and caused an excitement in the city the outbreak of which the public authorities were unable for the moment to prevent or control.

Mr. Calderon expresses the opinion, that not only ought indemnification to be made to Mr. Laborde, her Catholic Majesty's consul, for injury and loss of property, but that reparation is due also from the government of the United States to those Spaniards residing in New Orleans whose property was injured or destroyed by the mob, and intimates that such reparation had been verbally promised to him. The undersigned sincerely regrets that any misapprehension should have grown up out of any conversation between Mr. Calderon and officers of this government on this unfortunate and unpleasant affair; but, while this government has manifested a willingness and determination to perform every duty which one friendly nation has a right to expect from another in cases of this kind, it supposes that the rights of the Spanish consul, a public officer residing here under the protection of the United States government, are quite different from those of the Spanish subjects who have come into the country to mingle with our own citizens, and here to pursue their private business and objects. The former may claim special indemnity; the latter are entitled to such protection as is afforded to our own citizens. While, therefore, the losses of individuals, private Spanish subjects, are greatly to be regretted, yet it is understood that many American citizens suffered equal losses from the same cause; and these private individuals, subjects of her Catholic Majesty, coming voluntarily to reside in the United States, have certainly no cause of complaint, if they are protected by the same laws, and the same administration of law, as native-born citizens of this country. They have, in fact, some advantages over citizens of the State in which they happen to be, inasmuch as they are enabled, until they become citizens themselves, to prosecute for any injuries done to their persons or property in the courts of the United States, or the State courts, at their election.

The President is of opinion, as already stated, that, for obvious reasons, the case of the consul is different, and that the government of the United States should provide for Mr. Laborde a

just indemnity; and a recommendation to that effect will be laid before Congress at an early period of its approaching session. This is all which it is in his power to do. The case may be a new one, but the President, being of opinion that Mr. Laborde ought to be indemnified, has not thought it necessary to search for precedents.

In conclusion, the undersigned has to say, that if Mr. Laborde shall return to his post, or any other consul for New Orleans shall be appointed by her Catholic Majesty's government, the officers of this government resident in that city will be instructed to receive and treat him with courtesy, and with a national salute to the flag of his ship, if he shall arrive in a Spanish vessel, as a demonstration of respect, such as may signify to him, and to his government, the sense entertained by the government of the United States of the gross injustice done to his predecessor by a lawless mob, as well as the indignity and insult offered by it to a foreign state with which the United States are, and wish ever to remain, on terms of the most respectful and pacific intercourse.

The undersigned avails himself of this occasion to offer to Mr. Calderon renewed assurances of his distinguished consideration.

DANIEL WEBSTER.

DON A. CALDERON DE LA BARCA, *Minister of Spain to the United States.*

THE LOPEZ EXPEDITION.

Mr. Webster to Mr. Barringer, Minister of the United States to Spain.

Department of State, Washington, November 26, 1851.

SIR, — Your despatches to No. 64, inclusive, have been received. I am happy to inform you that the complaints of her Catholic Majesty's government, respecting insults to the Spanish consul and flag by a mob at New Orleans, and other acts of violence against the property of her subjects in this country, all occasioned by the excitement growing out of the late invasion of Cuba and its incidents and consequences, have been made the subject of a correspondence between this Department and Mr. Calderon, her Majesty's minister here. A copy of this correspondence is herewith transmitted to you, by which you will perceive that those complaints have been met by the government of the United States in a manner satisfactory to the representative of Spain. Her Catholic Majesty's government must be too just to suppose for a moment, either that the government of the United States has connived at the several invasions of Cuba by persons proceeding from our ports, or that any thing within the power of the government has been omitted for preventing those invasions, and for punishing those concerned in them. It has now been many months that these hostile designs against Cuba have occupied the attention of the government of the United States, from week to week and from day to day. The most zealous efforts have been made to bring to condign punishment all who have been disposed to violate the laws of their own country, by making war upon a Spanish possession. Her Catholic Majesty's government is quite well aware that ~~the~~

principal instigator of this criminal invasion of Cuba, and the leader of the expedition, was one of her Majesty's subjects, who came to this country and abused its hospitality by inducing American citizens, mostly young and ill-informed persons, to embark in his cause and follow his standard. There is good reason to believe, that but for this agency, and that of other Spaniards who had come to the country, no expedition against Cuba would ever have been set on foot. The policy of the United States is the policy of peace, until there shall arise just cause of war. The colonies of Spain are near to our own shores. Our commerce with them is large and important, and the records of the diplomatic intercourse between the two countries will show to her Catholic Majesty's government how sincerely and how steadily the United States have manifested the hope that no political changes might lead to a transfer of these colonies from her Majesty's crown. If there is one among the existing governments of the civilized world which for a long course of years has diligently sought to maintain amicable relations with Spain, it is the government of the United States.

Not only does the correspondence between the two governments show this, but the same truth is established by the history of the legislation of the country, and the general course of the executive government. In this recent invasion, Lopez and his fellow-subjects in the United States succeeded in deluding a few hundred men, by a long-continued and systematic misrepresentation of the political condition of the island, and of the wishes of its inhabitants. And it is not for the purpose of reviving unpleasant recollections that her Majesty's government is reminded, that it is not many years since the commerce of the United States suffered severely from armed boats and vessels which found refuge and shelter in the ports of the Spanish islands. These violations of the law, these authors of gross violence towards the citizens of this republic, were finally suppressed, not by any effort of the Spanish authorities, but by the activity and vigilance of our navy. This, however, was not accomplished but by the efforts of several years, nor until many valuable lives, as well as a vast amount of property, had been lost. Among others, Lieutenant Allen, a very valuable and distinguished officer in the naval service of the United States, was killed in an action with these banditti.

All this is not said for the purpose of making or renewing complaints, either of the violation of treaty obligations or of unjustifiable remissness, against the government of Spain or the authorities of the islands. But it may be brought to the notice of the Spanish government as one of the consequences which may sometimes flow from the conduct of men disposed to carry on criminal enterprises, and favored, in the execution of such enterprises, by the contiguity of the possessions of the two governments. The Spanish islands lie near the coast of America, and the use of steam has rendered the passage from one to the other short; but while this facilitates the accomplishment of the purposes of wrongdoers, on the other hand it augments the means of government to pursue, overtake, and disperse them, or bring them to proper trial and punishment. In truth, steam has greatly increased the proximity of Cuba to the United States. We have become much nearer neighbors than formerly, and the duty which this new state of things devolves on both governments is to keep a closer and stricter watch on their subjects and citizens respectively, in order that no violation of treaty obligations, and no interruption of the peace and amity existing between the two governments, may take place. And this duty will be performed on the part of the United States diligently and faithfully, in the true spirit of treaties, as well as in the proper execution of the laws. You are at liberty to communicate these observations to the government of her Catholic Majesty.

I have now to call your attention to another subject of much interest. We have learned that a hundred and sixty-two of the persons captured on the island of Cuba, as having constituted a part of Lopez's forces, have been sent to Spain. We have no official information respecting their trial or sentence, or of their subsequent destination, but it is generally reported that they have been or are to be sent to the mines. The government of the United States has admitted that these violators both of the law of nations and of the laws of their own country have no legal claim for its protection. Yet they are men, and most of them ignorant or deluded men. It cannot be denied that they are, as such, objects of compassion; and I think I may say, that severe punishment inflicted on so many persons for an attempt which has ended in a failure so signal, and for an offence which, however

grave, has already been expiated by the lives of a majority of those who participated in it, might be regarded as inconsistent with feelings of humanity and that generosity of sentiment which may not unreasonably be looked for from the sovereign of a great nation. This seems to have been the sentiment entertained by the Captain-General of Cuba, under the influence of which he pardoned several of the captives; and her Majesty's government may be assured, that this wise and well-considered exercise of clemency and mercy has produced the best effects in this country. He has said, that in the executions ordered by him he acted under a conviction of the absolute necessity of setting an example which might deter others from the performance of acts of similar criminality. That example has been set by the infliction of a punishment as prompt as it was awful, by the execution of fifty persons. The knowledge of their miserable fate has been carried to every man in this country, and spread all over the world.

Is not this enough? Can example be made more terrific? Certainly an act of clemency on the part of the Spanish government could not now be thought a symptom of weakness. May not the sword of justice be now sheathed without danger, and the voice of Christian humanity be allowed to be heard? And even if the Spanish government can entertain no great feeling of compassion for these deluded and offending men themselves, is it not highly just and proper to consider that they have friends and families, distressed fathers and mothers, weeping brothers and sisters, all of them unoffending, and some of them most respectable persons? Application has been made for the interposition of the kind offices of this government from fathers, whose sons (thoughtless young men, seduced by the efforts of Lopez and his associates) eloped from their own homes and joined the expedition without the knowledge of their friends. I am aware, that, in regard to the results of the Cuban invasion, all cause for sympathy and compassion is not on one side. I am aware that a general officer in her Majesty's service was slain, and that many Spanish soldiers and Spanish subjects lost their lives in defence of their government and of their own homes. But the President thinks that it is wise to suffer oblivion to cover the past. He is anxious for the removal of every cause which might tend to keep alive ill-will between the citi-

zens and subjects of the two countries. So long as these prisoners shall continue to be suffering a severe and lingering punishment in a foreign land, so long will efforts be constantly made by their friends to procure their release, by appeals to the good offices of their government. The tendency of these applications can only be to keep alive a very considerable irritation. It is in consideration of this, and from a strong wish for the extinguishment of all feelings of that kind, that, in the judgment of the President, nothing would be more useful than the granting of her Majesty's pardon to the residue of these prisoners, and suffering them to return to their own homes.

Those who were pardoned by the Captain-General of Cuba appear to have been among the most prominent and well-informed members of the expedition. The friendless are left to their fate, although less culpable, as being less informed of their duties and obligations. It seems invidious and unjust to make distinctions of this kind. You say that the existing belief in Spain is, that the result of the expedition has strengthened the hands of the Spanish government, and given new security to its possession of the island. A similar sentiment prevails, to some extent, here.

We are not apprised of the disposition which may have been made of the prisoners, who, as you state in your No. 62, have arrived at Vigo. In answer to your inquiry as to whether, in any event, and to what extent, assistance in clothing, or other necessaries, might be furnished to such as might need and apply for the same on account of the United States, I have to remark, that it is expected that none of the needy among the prisoners will be allowed to suffer for want of the necessaries of life. You will accordingly take care that their wants are provided for.

An application will be made to Congress for an appropriation towards defraying any expenses which may thereby be occasioned.

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

DANIEL WEBSTER.

To D. M. BARRINGER Esq., &c.

THE CASE OF THRASHER.

Mr. Webster to Mr. Barringer.

Department of State, Washington, December 13, 1851.

SIR, — The object of this despatch is to call your attention particularly to the case of John S. Thrasher, a native-born citizen of the United States, but for some years past a resident in Havana, and there lately tried for high treason or conspiracy, convicted, sentenced to eight years' confinement to hard labor, and sent to Spain in execution of that sentence. He has respectable friends and connections in the United States who feel much interest for him, and who have pressed his case upon the consideration of this department, earnestly invoking the interposition of the government in his behalf.

It is much to be regretted that Mr. Thrasher has made no communication whatever to this department respecting the circumstances of his case, so as to enable us to see what are the precise grounds of his complaint.

We have used all the means in our power to learn the particulars, as you will perceive by copies of two letters addressed by this department to the American consul at Havana. To these letters we have received as yet no answer. A despatch on this subject was prepared for you some days ago, but before it was delivered to the messenger a communication was received from Mr. Calderon, her Majesty's plenipotentiary here, communicating a copy of a letter of the Governor-General of Cuba to him, and also an opinion of the Real Audiencia Pretorial (Royal Court of Judicature) upon the construction of the seventh article of the treaty between the United States and Spain. The translation of these documents has

necessarily caused some delay. You will perceive that the Spanish authorities of the island represent that Mr. Thrasher had been long a resident in Havana; had become domiciled there, and had taken the oath of allegiance to the Spanish crown; and therefore, as they suppose, was answerable to the ordinary tribunals of the country for any criminal act committed by him.

This causes it to be the more regretted that he has made no communication to the government of his own case, as he understands it. He has indeed, through the press, addressed a general letter of remonstrance to the government and people of the United States, and this is all we hear from him personally. Nevertheless, his case has been thought deserving of attention, and there is a wish on the part of government to do all which may be proper in his behalf. If the official account of the Spanish authorities be correct, Mr. Thrasher appears to have *expatriated himself*, and to have become, at least for the time, a subject of the Crown of Spain. He had chosen a new government and a new home; and so long as he chose to remain under the authority and protection of that government, he would seem to have little right to set up against it any immunity founded on his original and native character as a citizen of the United States. There is no doubt that any one who chooses to reside in a country is bound to conform to its laws, and is amenable to its tribunals for their violation; the more especially if he has promised subjection and obedience to those laws, and taken an oath of allegiance to the sovereign power.

Mr. Thrasher's friends insist, nevertheless, that on his trial he was deprived of certain privileges secured to citizens of the United States by the seventh article of our treaty with Spain of 1795. But it may be doubtful whether, after having sworn allegiance to the Spanish government, he can longer claim the privileges and immunities of an American citizen. In the United States, as you know, the oath of allegiance is the consummation of the proceedings by which a foreigner becomes a citizen of this country, and renounces all allegiance to every foreign government. It may be doubtful, also, whether, if he were to be regarded in all respects as an American citizen, the provisions of the seventh article of the treaty of 1795 have been violated in his case.

Probably, under existing circumstances, the most useful course for the government of the United States to pursue in his behalf, and in order to obtain his release, is to make the same application for him which has been made in favor of the persons connected with the expedition of Lopez, who have, in like manner, been sent to Spain. His case, however, is certainly less flagrant than theirs. They were violent invaders, proceeding to Cuba with arms in their hands to make war upon the Spanish government and people. He at most could be only guilty of some connivance, or secret countenance, of these unlawful proceedings. You will perceive, therefore, that his case is one more fit for a lenient consideration than that of those with whom the project of invasion originated, and who were made prisoners in attempting its forcible execution. You will present this point as fully as may be to the consideration of the Queen's government, and urge it with earnestness.

In the instruction of this department, No. 48, considerations were presented which it was hoped would prevail on that government to release those persons who had been taken prisoners in the expedition of Lopez. The expectation that such a release would be ordered is now a good deal strengthened by information which the department has received, that those of the prisoners who were British subjects have already been liberated.

Mr. Thrasher is represented as an amiable and intelligent man, and, as his friends represent the matter, his conduct was principally instigated, not so much by sympathy with the invaders in their general objects, as by a desire to minister to their necessities. We cannot judge of this, because we have neither any proof nor any statement of the particular acts in which the alleged treason or conspiracy consisted. But, however this may be, you will present to her Catholic Majesty's government, in as strong a manner as may be consistent with propriety, the expediency of pardoning him with the rest, so that nothing may remain in the form of lingering punishment of an individual to keep alive the recollection of occurrences equally lamented by both governments. The unthinking and imprudent have been most severely admonished by events; those who violated the law have seen that punishment always awaits such violation; and we may be allowed to hope that the exercise on the part of her Majesty's government of forbearance and clemency will not tend to encourage criminal enterprises in future.

Her Majesty's government cannot doubt the motives which have actuated that of the United States in preventing and repressing, to the utmost of its power, these invasions of Spanish territory. It cannot doubt its full and perfect disposition to fulfil all its obligations, and to maintain with Spain the most friendly relations. And the President directs me to say, that he hopes that her Majesty's government, being thus fully assured of the entire good faith of that of the United States, will readily listen to the suggestions which I have been directed to make in behalf of all the prisoners; and I repeat, with a still more strengthened conviction, the sentiment which I expressed in my despatch No. 48, that the restoration of perfect harmony and solid and durable peace between the two countries will be aided and promoted by the release of all these miserable men from further imprisonment.

With a view to its safety and despatch, this instruction is sent to you by a special bearer.

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

DANIEL WEBSTER.

TO DANIEL M. BARRINGER, ESQ., &c., &c., Madrid.

Mr. Webster to the President of the United States.

Department of State, Washington, December 23, 1851.

The Secretary of State, to whom has been referred a resolution of the House of Representatives of the 15th instant, in the following words: "*Resolved*, That the President of the United States be requested, so far as in his judgment may be compatible with the public interest, to communicate to this House any information in possession of the executive respecting the imprisonment, trial, and sentence of John S. Thrasher, in the island of Cuba, and his right to claim the protection of the government as a native-born citizen of the United States"; has the honor to report to the President, that all the official information in possession of this department respecting the imprisonment, trial, and sentence of Mr. John S. Thrasher, is contained in the despatches of Allen F. Owen, Esquire, late United States Consul at Havana, together with a correspondence between him and the Governor-General of the island of Cuba, and in a letter addressed by the Governor-General to Don A. Calderon de la Barca, her Catholic Majesty's Minister

in the United States; copies of all of which are herewith transmitted.

There is no doubt that John S. Thrasher is a citizen of the United States by birth, nor is there any doubt that he has resided in the island of Cuba for a considerable number of years, engaged in business transactions, sometimes as a merchant, and sometimes as the conductor of a newspaper press; although the precise period and duration of such residence are not known. On this point, the department has sought in vain for exact information. Mr. Thrasher himself has made no communication to this department, although he has, through the press, addressed a general letter of remonstrance to the government and people of the United States.

In the letter from the Governor of Cuba to her Catholic Majesty's Minister in the United States, already mentioned, it is stated that he has been, not only a resident in Havana for a considerable time, but domiciled there by regular proceedings; and that he has, in solemn form, sworn allegiance to the Spanish crown. There is no evidence in the possession of the government to show what was his purpose with regard to returning to his native country, at any fixed or definite time. Other members of his family are understood to be, like himself, residents in Cuba, his father having gone to that island some years ago.

These are all the known general facts respecting the nature of his residence in Havana, which have come to the knowledge of this department.

It appears that soon after the failure and breaking up of the late expedition of Narcisso Lopez, in the invasion of Cuba by him and the troops under his command, Mr. Thrasher was arrested and tried for high treason or conspiracy against the crown of Spain, condemned to eight years' imprisonment to hard labor, and sent to Spain in execution of that sentence. There is no evidence in the department to show what were the particular acts of treason or conspiracy alleged, or proved, against him. We have only the general statement, although pains has been taken to ascertain particulars.

The first general question, then, is, as to his right to exemption from Spanish law and Spanish authority, on the ground of his being a native-born citizen of the United States.

The general rule of the public law is, that every person of full

age has a right to change his domicile ; and it follows, that when he removes to another place, with an intention to make that place his permanent residence, or his residence for an indefinite period, it becomes instantly his place of domicile ; and this is so, notwithstanding he may entertain a floating intention of returning to his original residence or citizenship at some future period. The Supreme Court of the United States has decided, "that a person who removes to a foreign country, settles himself there, and engages in the trade of the country, furnishes by these acts such evidences of an intention permanently to reside in that country, as to stamp him with its national character"; and this undoubtedly is in full accordance with the sentiments of the most eminent writers, as well as with those of other high judicial tribunals, on the subject. No government has carried this general presumption farther than that of the United States, since it is well known that hundreds of thousands of persons are now living in this country who have not been naturalized according to the provisions of law, nor sworn any allegiance to this government, nor been domiciled amongst us by any regular course of proceedings. What degree of alarm would it not give to this vastly numerous class of men, actually living amongst us as inhabitants of the United States, to learn that, by removing to this country, they had not transferred their allegiance from the governments of which they were originally subjects to this government? And, on the other hand, what would be the condition of this country and its government, if the sovereigns of Europe, from whose dominions they have emigrated, were supposed to have still a right to interpose to protect such inhabitants against the penalties which might be justly incurred by them in consequence of their violation of the laws of the United States? In questions on this subject, the chief point to be considered is the *animus manendi*, or intention of continued residence ; and this must be decided by reasonable rules and the general principles of evidence. If it sufficiently appear that the intention of removing was to make a permanent settlement, or a settlement for an indefinite time, the right of domicile is acquired by a residence even of a few days.

It is undoubtedly true that an American citizen who goes into a foreign country, although he owes local and temporary allegiance to that country, is yet, if he performs no other act

changing his condition, entitled to the protection of his own government; and if, without the violation of any municipal law, he should be treated unjustly, he would have a right to claim that protection; and the interposition of the American government in his favor would be considered as a justifiable interposition. But his situation is completely changed, when, by his own act, he has made himself the subject of a foreign power. And a person found residing in a foreign country is presumed to be there *animo manendi*, or with the purpose of remaining; and to relieve himself of the character which this presumption fixes upon him, he must show that his residence was only temporary, and accompanied all the while with a fixed and definite intention of returning. If in that country he engages in trade and business, he is considered by the law of nations as a merchant of that country; nor is the presumption rebutted by the residence of his wife and family in the country from which he came. This is the doctrine as laid down by the United States courts. And it has been decided that a Spanish merchant, who came to the United States and continued to reside here and carry on trade after the breaking out of war between Spain and Great Britain, is to be considered an American merchant, although the trade could be lawfully carried on by a Spanish subject only. But the necessity of any presumption in Mr. Thrasher's case is entirely removed, if, in fact, he actually took out letters of domiciliation, in order to enable him to transact business such as a Spanish subject or a domiciliated foreigner can alone transact, and actually swore allegiance to the Spanish crown. For the purpose of showing the mode by which foreigners are domiciled in the island of Cuba, and the duties thereby imposed upon them, and also by what means they obtain the ultimate right of naturalization, I have thought it worth while to quote at length a translation of the royal decree of January 17, 1815, and also the royal colonization decree of October 21, 1817. It is understood that no change has been made, by royal decrees, in the requirements of the Spanish law of domicile and naturalization since the last of those periods.

“All foreigners belonging to powers and countries that are friendly to me, who may wish to establish themselves, or who may already be established, in the island of Cuba, must produce suitable evidence before

the government of said island that they profess the Roman Catholic religion, and without this indispensable qualification they will not be allowed to become domiciled there; but my vassals in these dominions, and those inhabiting the Indies, need not be compelled to certify to this effect, inasmuch as, in regard to them, there can be no doubt upon this point.

“Those foreigners who shall be admitted conformably to the provisions of the foregoing article, shall take the oath of allegiance and vassalage before the governor, by which they shall promise to obey the general laws and ordinances of the Indies, to which all Spaniards are amenable.

“At the expiration of the first five years of residence in the island, on the part of foreign colonists, and on their contracting then the obligation to remain there perpetually, they shall be allowed all the rights and privileges of naturalization, equally with such children as they may have brought with them, or who may have been born to them in the aforesaid island, in order that the same may consequently be allowed to hold honorable offices, both civil and military, according to the talents of each individual.”

The same decree also provides that “a foreigner may reside in Cuba for the period of three months without letters of domicile,” but that on his remaining there without such letters beyond the time specified, “he becomes guilty of disobedience to the laws, and amenable to such just punishment as, after a close examination of the cause, may be imposed on him.”

Upon the same subject, and in corroboration of the above, the royal colonization decree of October 21, 1817, says:—

“Letters of domicile shall be issued to any foreign colonist who professes the Roman Catholic religion, and takes the oath of allegiance, by means of which, during five years of residence, it shall be optional with him either to return to his own country, or to present himself before the superior magistrate at the expiration of those five years, for the purpose of obtaining his naturalization papers, which will be granted to him without any great formality, in order that, on being thus naturalized, he may enjoy all the rights and privileges appertaining to Spaniards, as well as his sons and legitimate descendants.”

On the 6th of March, 1818, the Governor-General, in view of the above-mentioned royal decree of October 21, 1817, issued a *Bando Real*, in which it is provided, that,

“In the absence of the requisite qualifications in regard to the pro-

fession of the Catholic faith, the fact shall be noted down in the letters of domicile, which will then be issued on probation for the term of two years. If, at the expiration of those two years, the applicant cannot produce satisfactory evidence of his professing our sacred religion, the letter of domicile shall be taken away from him, and he will then be considered in the light of merely a transient foreigner, and, as such, be compelled to leave this island at the expiration of three months, in pursuance of the twenty-eighth article of the royal decree."

But, independently of a residence with intention to continue such residence, independently of any domiciliation, independently of the taking of an oath of allegiance or of renouncing any former allegiance, it is well known that by the public law an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason, or other crimes, as a native-born subject might be, unless his case is varied by some treaty stipulations; but this duty of obedience to the laws, arising from local and temporary allegiance, ceases, of course, the moment he transfers himself back to his original country.

An American citizen by birth, owing of course a native allegiance to the United States, going abroad and obtaining no residence under a foreign government, and professing to such government no allegiance, and who should yet commit acts of hostility or war against this country, would seem to bring himself within the act of Congress which declares that, if any person or persons owing allegiance to the United States of America shall levy war against them, or shall adhere to their enemies, giving them aid and comfort, within the United States or elsewhere, he or they shall be adjudged guilty of treason. And the reason is plain, since his allegiance in such a case is original and native, and has not been transferred, nor lost in any other local allegiance arising from residence elsewhere, but continues to be the primitive tie which binds him to his country.

But, as has been already said, every foreigner born, residing in a country, owes to that country allegiance and obedience to its laws so long as he remains in it, as a duty imposed upon him by the mere fact of his residence, and the temporary protection which he enjoys, and is as much bound to obey its laws as native subjects or citizens. This is the universal understand-

ing in all civilized states, and nowhere a more established doctrine than in this country.

Mr. Jefferson, when Secretary of State, in his letter to Gouverneur Morris of the 16th of August, 1793, speaking of the right of private citizens to make war upon a country with which the government of the United States is at peace, says:—

“If one citizen has a right to go to war of his own authority, every citizen has the same. If every citizen has that right, then the nation (which is composed of all its citizens) has a right to go to war by the authority of its individual citizens. But this is not true, either on the general principles of society, or by our Constitution, which gives that power to Congress alone, and not to the citizens individually. Then the first position was not true; and no citizen has a right to go to war of his own authority; and for what he does without right, he ought to be punished. Indeed, nothing can be more obviously absurd, than to say that all the citizens may be at war, and yet the nation at peace.

“It has been pretended, indeed, that the engagement of a citizen in an enterprise of this nature was a divestment of the character of citizen, and a transfer of jurisdiction over him to another sovereign. Our citizens are certainly free to divest themselves of that character by emigration, and other acts manifesting their intention, and may then become the subjects of another power, and free to do whatever the subjects of that power may do. But the laws do not admit that the bare commission of a crime amounts of itself to a divestment of the character of citizen, and withdraws the criminal from their coercion. They would never prescribe an illegal act among the legal modes by which a citizen might disfranchise himself; nor render treason, for instance, innocent, by giving it the force of a dissolution of the obligation of the criminal to his country.”

This is in accordance with the opinion of the Circuit Court of the United States for Pennsylvania, by whom it was stated, in 1793, that, “if one citizen of the United States may take part in the present war, ten thousand may. If they may take part on one side, they may take part on the other; and thus thousands of our fellow-citizens may associate themselves with different belligerent powers, destroying not only those with whom we have no hostility, but destroying each other. In such a case, can we expect peace among their friends who stay behind? And will not a civil war, with all its lamentable train of evils, be the natural effect?”

Our citizens, who resort to countries where the trial by jury

is not known, and who may there be charged with crime, frequently imagine, when the laws of those countries are administered in the form customary therein, that they are deprived of rights to which they are entitled, and therefore may expect the interference of their own government. But it must be remembered, in all such cases, that they have of their own free will elected a residence out of their native land, and preferred to live elsewhere, and under another government, and in a country in which different laws prevail.

They have chosen to settle themselves in a country where jury trials are not known; where representative government does not exist; where the privilege of the writ of *habeas corpus* is unheard of; and where judicial proceedings in criminal cases are brief and summary. Having made this election, they must necessarily abide its consequences. No man can carry the ægis of his national American liberty into a foreign country, and expect to hold it up for his exemption from the dominion and authority of the laws and the sovereign power of that country, unless he be authorized to do so by virtue of treaty stipulations.

The definition of crimes, the denouncement of penalties for their commission, and the forms of proceeding by which guilt is to be ascertained, are high prerogatives of sovereignty, and one nation cannot dictate them to another without being liable to the same dictation herself.

The friends of Mr. Thrasher interpose in his behalf the seventh article of the treaty of 1795, which declares that, in all cases of offences committed by any citizen or subject of the one party within the jurisdiction of the other, the same shall be prosecuted by order and authority of law only, and according to the regular course of proceeding in such cases. They shall also be allowed to employ such advocates as they may judge proper before the tribunals of the other party, who shall have free access to be present at the proceedings in such causes, and at the taking of all examinations and evidence which may be exhibited in the said trials.

As the public law, however, does in no case impart to foreigners residing in any country privileges which are denied to its own citizens or subjects, except, perhaps, that of leaving the country, it may be thought doubtful whether, by the arti-

cle of the treaty referred to, the parties could have contemplated any thing more than to place citizens of the United States within Spanish jurisdiction on an equality with Spanish subjects, and Spanish subjects in the United States on an equality with our own citizens, in criminal proceedings. A citizen of Spain in this country might complain, perhaps, of a trial by jury here, because of the supposed partialities and prejudices of juries; while an American in Spain complains of condemnation, in summary form, by judges, without the intervention of a jury to ascertain his guilt. The question arising on the latter clause of this seventh article of the treaty with Spain may not be entirely clear or free from difficulty, especially when it is known that the minister who negotiated this treaty on the part of the United States appears to have attached considerable importance to this right of selecting and employing counsel. Mr. Thomas Pinckney, the American negotiator, says, in a letter on the subject of the treaty, that the first part of this seventh article was taken from the sixteenth article of our treaty with Prussia, and that he added the latter part because he considered it a good stipulation in all situations, but particularly in Spain.

We can readily imagine why it should have been stipulated in the treaty, that the trial of an American citizen in Spain should be open and public, because we know that, as late as the year 1795, there existed in Spain an ecclesiastical jurisdiction, having power over life and death, whose proceedings were always secret. Whether it was intended by the parties that this right of selecting counsel in the case of the arrest or the trial of an American citizen, for treason, or other crime against the civil law, should extend further, or be broader, than in the case of a Spanish subject prosecuted for a similar offence, may be matter of doubt and controversy. The view which the Spanish courts of the highest jurisdiction take of it, may be seen by the communication of the Royal Court of Judicature accompanying the letter of the Governor-General to Mr. Calderon. But, however all this may be, the general question still returns, whether this right secured by treaty, whatever it is, be not justly limited to such persons as are at the time in all respects American citizens, having never vol-

untarily changed their domicile or taken upon themselves a new allegiance.

In this view of the case, it might therefore be asked whether, if Mr. Thrasher had been a native-born subject of her Catholic Majesty, his trial and its result would have been different from what they actually were.

If indeed Mr. Thrasher, in his arrest and trial, did not enjoy the benefits which native-born Spanish subjects enjoy in like cases, but was more harshly treated, or more severely punished, for the reason that he was a native-born citizen of the United States, it would be a clear case of the violation of treaty obligations, and would demand the interposition of the government. There exists in this department no proof of any such extraordinary treatment of Mr. Thrasher. It may have taken place. In the absence of all other information, reference is made on that point, as well as on all the rest of the case, to the letter of the Governor-General of Cuba to Mr. Calderon, her Catholic Majesty's Minister Plenipotentiary to this government.

For the further information of the House of Representatives, I also transmit herewith a copy of the despatch of the 13th instant, from this department to the Minister of the United States at Madrid, and of despatches to the acting consul at Havana of the 12th and 28th of November last.

DANIEL WEBSTER.

TO THE PRESIDENT.