

SPAIN.

Article XXIX of the treaty of friendship concluded July 3, 1902, page 1701, provides:

"All treaties, agreements, conventions and contracts between the United States and Spain prior to the treaty of Paris shall be expressly abrogated and annulled, with the exception of the treaty signed the seventeenth of February, 1834, between the two countries, for the settlement of claims between the United States of America and the Government of His Catholic Majesty, which is continued in force by the present convention."

1795.^a

TREATY OF FRIENDSHIP, BOUNDARIES, COMMERCE AND NAVIGATION.

Concluded October 27, 1795; ratification advised by the Senate March 3, 1796; ratifications exchanged April 25, 1796; proclaimed August 2, 1796.

ARTICLES.

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| I. Amity. | XIII. Time allowed merchants in war. |
| II. Boundary line. | XIV. Privateers prohibited. |
| III. Commissioners and surveyors. | XV. Liberty of trade. |
| IV. Western boundary of the United States. | XVI. Contraband. |
| V. Conduct toward Indians. | XVII. Sea letters. |
| VI. Protection of vessels. | XVIII. Search. |
| VII. Embargo. | XIX. Consuls. |
| VIII. Asylum for vessels. | XX. Courts of justice. |
| IX. Property taken from pirates. | XXI. Claims. |
| X. Vessels wrecked. | XXII. Deposit of goods at New Orleans. |
| XI. Disposition of property. | XXIII. Ratification. |
| XII. Passports for vessels. | |

His Catholic Majesty and the United States of America, desiring to consolidate, on a permanent basis, the friendship and good correspondence which happily prevails between the two parties, have determined to establish, by a convention, several points, the settlement whereof will be productive of general advantage and reciprocal utility to both nations.

^a Federal cases: *The Nereide* (9 Cranch, 388), *The Pizarro* (2 Wheat., 227), *The Nuestra Señora de la Caridad* (4 Wheat., 497), *The Amiable Isabella* (6 Wheat., 1), *The Bello Corrunes* (6 Wheat., 152), *The Santissima Trinidad* (7 Wheat., 283), *Henderson v. Poindexter's Lessee* (12 Wheat., 530), *U. S. v. The Amistad* (15 Pet., 518), *Pollard v. Hagan* (3 How., 212), *Robinson v. Minor* (10 How., 627), *Le Tigre* (3 Wash. C. C., 567), *The Santissima Trinidad* (1 Brock., 478).

With this intention, His Catholic Majesty has appointed the most excellent Lord Don Manuel de Godoy, and Alvarez de Faria, Rios, Sanchez, Zarzosa, Prince de la Paz, Duké de la Alcudia, Lord of the Soto de Roma, and of the State of Albalá, Grandee of Spain of the first class, perpetual Regidor of the city of Santiago, Knight of the illustrious Order of the Golden Fleece, and Great Cross of the Royal and distinguished Spanish Order of Charles the III, Commander of Valencia del Ventoso, Rivera, and Acenchal in that of Santiago; Knight and Great Cross of the religious Order of St. John; Counsellor of State; first Secretary of State and Despacho; Secretary to the Queen; Superintendent General of the Posts and Highways; Protector of the Royal Academy of the Noble Arts, and of the Royal Societies of Natural History, Botany, Chemistry, and Astronomy; Gentleman of the King's Chamber in employment; Captain General of his Armies; Inspector and Major of the Royal Corps of Body Guards, &c., &c., &c., and the President of the United States, with the advice and consent of their Senate, has appointed Thomas Pinckney, a citizen of the United States, and their Envoy Extraordinary to His Catholic Majesty. And the said Plenipotentiaries have agreed upon and concluded the following articles:

ARTICLE I.

There shall be a firm and inviolable peace and sincere friendship between His Catholic Majesty, his successors and subjects, and the United States and their citizens, without exception of persons or places.

ARTICLE II.^a

To prevent all disputes on the subject of the boundaries which separate the territories of the two high contracting parties, it is hereby declared and agreed as follows, to wit: The southern boundary of the United States, which divides their territory from the Spanish colonies of East and West Florida, shall be designated by a line beginning on the River Mississippi, at the northernmost part of the thirty-first degree of latitude north of the equator, which from thence shall be drawn due east to the middle of the River Apalachicola, or Catahouche, thence along the middle thereof to its junction with the Flint; thence straight to the head of St. Mary's River, and thence down the middle thereof to the Atlantic Ocean. And it is agreed that if there should be any troops, garrisons, or settlements of either party in the territory of the other, according to the above-mentioned boundaries, they shall be withdrawn from the said territory within the term of six months after the ratification of this treaty, or sooner if it be possible; and that they shall be permitted to take with them all the goods and effects which they possess.

ARTICLE III.^a

In order to carry the preceding article into effect, one Commissioner and one Surveyor shall be appointed by each of the contracting parties, who shall meet at the Natchez, on the left side of the

^a These articles are annulled by Article XII of the Treaty of February 22, 1819.

River Mississippi, before the expiration of six months from the ratification of this convention, and they shall proceed to run and mark this boundary according to the stipulations of the said article. They shall make plats and keep journals of their proceedings, which shall be considered as part of this convention, and shall have the same force as if they were inserted therein. And if on any account it should be found necessary that the said Commissioners and Surveyors should be accompanied by guards, they shall be furnished in equal proportions by the commanding officer of His Majesty's troops in the two Floridas, and the commanding officer of the troops of the United States in their southwestern territory, who shall act by common consent, and amicably, as well with respect to this point as to the furnishing of provisions and instruments, and making every other arrangement which may be necessary or useful for the execution of this article.

ARTICLE IV.^a

It is likewise agreed that the western boundary of the United States which separates them from the Spanish colony of Louissiana, is in the middle of the channel or bed of the River Mississippi, from the northern boundary of the said States to the completion of the thirty-first degree of latitude north of the equator. And His Catholic Majesty has likewise agreed that the navigation of the said river, in its whole breadth from its source to the ocean, shall be free only to his subjects and the citizens of the United States, unless he should extend this privilege to the subjects of other Powers by special convention.

ARTICLE V.

The two high contracting parties shall, by all the means in their power, maintain peace and harmony among the several Indian nations who inhabit the country adjacent to the lines and rivers, which, by the preceding articles, form the boundaries of the two Floridas. And the bet[t]er to obtain this effect, both parties oblige themselves expressly to restrain by force all hostilities on the part of the Indian nations living within their boundaries: so that Spain will not suffer her Indians to attack the citizens of the United States, nor the Indians inhabiting their territory; nor will the United States permit these last-mentioned Indians to commence hostilities against the subjects of His Catholic Majesty or his Indians, in any manner whatever.

And whereas several treaties of friendship exist between the two contracting parties and the said nations of Indians, it is hereby agreed that in future no treaty of alliance, or other whatever, (except treaties of peace,) shall be made by either party with the Indians living within the boundary of the other, but both parties will endeavour to make the advantages of the Indian trade common and mutual[l]y beneficial to their respective subjects and citizens, observing in all things the most complete reciprocity; so that both parties may obtain the advantages arising from a good understanding with the said nations, without being subject to the expence which they have hitherto occasioned.

^a This article is annulled by Article XII of the Treaty of February 22, 1819.

ARTICLE VI.

Each party shall endeavour, by all means in their power, to protect and defend all vessels and other effects belonging to the citizens or subjects of the other, which shall be within the extent of their jurisdiction by sea or by land, and shall use all their efforts to recover, and cause to be restored to the right owners, their vessels and effects which may have been taken from them within the extent of their said jurisdiction, whether they are at war or not with the Power whose subjects have taken possession of the said effects.

ARTICLE VII.

And it is agreed that the subjects or citizens of each of the contracting parties, their vessels or effects, shall not be liable to any embargo or detention on the part of the other, for any military expedition or other public or private purpose whatever; and in all cases of seizure, detention, or arrest for debts contracted, or offences committed by any citizen or subject of the one party within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceeding usual in such cases. The citizens and subjects of both parties shall be allowed to employ such advocates, sollicitors, notaries, agents, and factors, as they may judge proper, in all their affairs, and in all their trials at law, in which they may be concerned, before the tribunals of the other party; and such agents 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.

ARTICLE VIII.

In case the subjects and inhabitants of either party, with their shipping, whether public and of war, or private and of merchants, be forced, through stress of weather, pursuit of pirates or enemies, or any other urgent necessity, for seeking of shelter and harbor, to retreat and enter into any of the rivers, bays, roads, or ports belonging to the other party, they shall be received and treated with all humanity, and enjoy all favor, protection, and help, and they shall be permitted to refresh and provide themselves at reasonable rates, with victuals and all things needful for the sustenance of their persons, or reparation of their ships and prosecution of their voyage; and they shall no ways be hindered from returning out of the said ports or roads, but may remove and depart when and whither they please, without any let or hindrance.

ARTICLE IX.

All ships and merchandize, of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas, shall be brought into some port of either state, and shall be delivered to the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof.

ARTICLE X.

When any vessel of either party shall be wrecked, foundered, or otherwise damaged, on the coasts or within the dominion of the other, their respective subjects or citizens shall receive, as well for themselves as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and if the operations of repair should require that the whole or any part of the cargo be unladen, they shall pay no duties, charges, or fees on the part which they shall relade and carry away.

ARTICLE XI.

The citizens and subjects of each party shall have power to dispose of their personal goods, within the jurisdiction of the other, by testament, donation, or otherwise, and their representatives being subjects or citizens of the other party, shall succeed to their said personal goods, whether by testament or ab intestato, and they may take possession thereof, either by themselves or others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the said goods are, shall be subject to pay in like cases.

And in case of the absence of the representative, such care shall be taken of the said goods, as would be taken of the goods of a native in like case, until the lawful owner may take measures for receiving them. And if questions shall arise among several claimants to which of them the said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. And where, on the death of any person holding real estate within the territories of the one party, such real estate would by the laws of the land descend on a citizen or subject of the other, were he not disqualified by being an alien, such subjects shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all rights of detraction on the part of the Government of the respective States.

ARTICLE XII.

The merchant-ships of either of the parties which shall be making into a port belonging to the enemy of the other party, and concerning whose voyage, and the species of goods on board her, there shall be just grounds of suspicion, shall be obliged to exhibit as well upon the high seas as in the ports and havens, not only her passports, but likewise certificates, expressly showing that her goods are not of the number of those which have been prohibited as contraband.

ARTICLE XIII.

For the bet[t]er promoting of commerce on both sides, it is agreed, that if a war shall break out between the said two nations, one year after the proclamation of war shall be allowed to the merchants in the cities and towns where they shall live, for collecting and trans-

porting their goods and merchandizes: And if anything be taken from them or any injury be done them within that term, by either party, or the people or subjects of either, full satisfaction shall be made for the same by the Government.

ARTICLE XIV.

No subject of His Catholic Majesty shall apply for, or take any commission or letters of marque, for arming any ship or ships to act as privateers against the said United States, or against the citizens, people, or inhabitants of the said United States, or against the property of any of the inhabitants of any of them, from any Prince or State with which the said United States shall be at war.

Nor shall any citizen, subject, or inhabitant of the said United States apply for or take any commission or letters of marque for arming any ship or ships to act as privateers against the subjects of His Catholic Majesty, or the property of any of them, from any Prince or State with which the said King shall be at war. And if any person of either nation shall take such commissions or letters of marque, he shall be punished as a pirate.

ARTICLE XV.^a

It shall be lawful for all and singular the subjects of His Catholic Majesty, and the citizens, people, and inhabitants of the said United States, to sail with their ships with all manner of liberty and security, no distinction being made who are the proprietors of the merchandizes laden thereon, from any port to the places of those who now are, or hereafter shall be, at enmity with His Catholic Majesty or the United States. It shall be likewise lawful for the subjects and inhabitants aforesaid, to sail with the ships and merchandizes aforementioned, and to trade with the same liberty and security from the places, ports, and havens of those who are enemies of both or either party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy aforementioned, to neutral places, but also from one place belonging to an enemy, to another place belonging to an enemy, whether they be under the jurisdiction of the same Prince or under several; and it is hereby stipulated that free ships shall also give freedom to goods, and that everything shall be deemed free and exempt which shall be found on board the ships belonging to the subjects of either of the contracting parties, although the whole lading, or any part thereof, should appertain to the enemies of either; contraband goods being always excepted. It is also agreed that the same liberty be extended to persons who are on board a free ship, so that, although they be enemies to either party, they shall not be made prisoners or taken out of that free ship, unless they are soldiers and in actual service of the enemies.

ARTICLE XVI.

This liberty of navigation and commerce shall extend to all kinds of merchandizes, excepting those only which are distinguished by the name of contraband; and under this name of contraband or pro-

^a This article is amended by the XII article of the Treaty of February 22, 1819.

hibited goods, shall be comprehended arms, great guns, bombs, with the fuses, and other things belonging to them, cannon-ball, gun-powder, match, pikes, swords, lances, speards, halberds, mortars, petards, granades, salpetre, muskets, musket-balls, bucklers, helmets, breastplates, coats of mail, and the like kind of arms proper for arming soldiers, musket-rests, belts, horses with their furniture, and all other warlike instruments whatever. These merchandizes which follows shall not be reckoned among contraband or prohibited goods: That is to say, all sorts of cloths, and all other manufactures woven of any wool, flax, silk, cotton, or any other materials whatever; all kinds of wearing ap[p]arel, together with all species whereof they are used to be made; gold and silver, as well coined as uncoined, tin, iron, latton, copper, brass, coals, as also wheat, barley, oats, and any other kind of corn and pulse; tobacco, and likewise all manner of spices, salted and smoked flesh, salted fish, cheese and butter, beer, oils, wines, sugars, and all sorts of salts, and in general all provisions which serve for the sustenance of life. Furthermore, all kinds of cotton, hemp, flax, tar, pitch, ropes, cables, sails, sail-cloths, anchors, and any parts of anchors; also ships' masts, planks, wood of all kind, and all other things proper either for building or repairing ships, and all other goods whatever which have not been worked into the form of any instrument prepared for war, by land or by sea, shall not be reputed contraband, much less such as have been already wrought and made up for any other use; all which shall be whol[ly] reckoned among free goods, as likewise all other merchandizes and things which are not comprehended and particularly mentioned in the foregoing enumeration of contraband goods; so that they may be transported and carried in the freest manner by the subjects of both parties, even to places belonging to an enemy, such towns or places being only excepted as are at that time besieged, blocked up, or invested. And except the cases in which any ship of war or squadron shall, in consequence of storms or other accidents at sea, be under the necessity of taking the cargo of any trading vessel or vessels, in which case they may stop the said vessel or vessels, and furnish themselves with necessaries, giving a receipt, in order that the Power to whom the said ship of war belongs may pay for the articles so taken according to the price thereof, at the port to which they may appear to have been destined by the ship's papers: and the two contracting parties engage, that the vessels shall not be detained longer than may be absolutely necessary for their said ships to supply themselves with necessaries; that they will immediately pay the value of the receipts, and indemnify the proprietor for all losses which he may have sustained in consequence of such transaction.

ARTICLE XVII.

To the end that all manner of dissentions and quar[r]els may be avoided and prevented on one side and the other, it is agreed, that in case either of the parties hereto should be engaged in a war, the ships and vessels belonging to the subjects or people of the other party must be furnished with sea-letters or passports, expressing the name, property, and bulk of the ship, as also the name and place of habitation of the master or commander of the said ship, that it may appear thereby that the ship really and truly belongs to the subjects of one of

the parties, which passport shall be made out and granted according to the form annexed to this treaty.^a They shall likewise be recalled every year, that is, if the ship happens to return home within the space of a year.

It is likewise agreed, that such ships being laden, are to be provided not only with passports as above mentioned, but also with certificates, containing the several particulars of the cargo, the place whence the ship sailed, that so it may be known whether any forbidden or contraband goods be on board the same; which certificates shall be made out by the officers of the place whence the ship sailed in the accustomed form. And if any one shall think it fit or advisable to express in the said certificates the person to whom the goods on board belong, he may freely do so: Without which requisites they may be sent to one of the ports of the other contracting party, and adjudged by the competent tribunal, according to what is above set forth, that all the circumstances of this omission having been well examined, they shall be adjudged to be legal prizes, unless they shall give legal satisfaction of their property by testimony entirely equivalent.

ARTICLE XVIII.

If the ships of the said subjects, people, or inhabitants, of either of the parties shall be met with, either sailing along the coasts [or] on the high seas, by any ship of war of the other, or by any privateer,

^a The form of passport referred to in this article is not annexed either to the original treaty signed by the negotiators, or to the copy bearing the ratification of the King of Spain, on file in the Department of State. See *The Amiable Isabella*, (6 Wheaton's Rep., 1.) It is remarkable, however, that to the Spanish version of the treaty, in vol. 2, page 429, of "*Coleccion de los Tratados de Paz*," &c., published at Madrid in 1800, "de orden del Rey, en la imprenta real," there are annexed two forms in Spanish for passports; one for ships navigating European seas, the other for those navigating the American seas. These forms will be found in 6th Wheaton's Rep., 97 *et seq.* No explanation of these facts has ever been discovered.

[Private.]

GEORGETOWN (COL.) 3 *Novr.* 1814

SIR: Averse to a correspondence with the writer of the enclosed letter, but willing to answer the object for public purposes, I take the liberty of doing it to you.

No form of a passport was annexed to the treaty with Spain, though referred to in one of the articles as annexed. To remedy this defect, the Secretary of State agreed with the Chevalier (now Marquis) Yrujo, Envoy of Spain, upon a form which has been constantly printed in the Spanish language, in the sea-letters issued to American vessels. It was closely translated from one of the other passports in the ordinary formulary, under the inspection of the Chevalier. From which of them I do not recollect—most probably it was from that contained in the treaty with Great Britain. My knowledge of the matter is the more certain from having had some agency in it.

I suppose there must be something in the correspondence of the Department of State *in perpetuum rei memoriam*, but as it passed about 18 years ago I cannot refer to it from memory.

Among the printed State-Papers I collected and had bound together, when employed in the Department of State, was a quarto volume, comprehending an official copy of the treaty as promulgated by the Spanish Sovereign. If the volume remains in the office, it may be consulted with advantage, as it embraces a variety of passports prescribed in consequence of the treaty and probably adopts and sanctions the one agreed upon at Philadelphia, as above explained.

With great consideration, I remain, sir, your most obed. servant,

JACOB WAGNER.

JAMES MONROE, Esqr., &c., &c., &c.

the said ship of war or privateer, for the avoiding of any disorder, shall remain out of cannon-shot, and may send their boats aboard the merchant-ship, which they shall so meet with, and may enter her to number of two or three men only, to whom the master or commander of such ship or vessel shall exhibit his passports, concerning the property of the ship, made out according to the form inserted in this present treaty; and the ship, when she shall have shewed such passports, shall be free and at liberty to pursue her voyage, so as it shall not be lawful to molest or give her chace in any manner, or force her to quit her intended course.

ARTICLE XIX.

Consuls shall be reciprocally established, with the privileges and powers which those of the most favoured nations enjoy, in the ports, where their Consuls reside or are permitted to be.

ARTICLE XX.

It is also agreed that the inhabitants of the territories of each party shall respectively have free access to the courts of justice of the other, and they shall be permitted to prosecute suits for the recovery of their properties, the payment of their debts, and for obtaining satisfaction for the damages which they may have sustained, whether the persons whom they may sue be subjects or citizens of the country in which they may be found, or any other persons whatsoever, who may have taken refuge therein; and the proceedings and sentences of the said courts shall be the same as if the contending parties had been subjects or citizens of the said country.

ARTICLE XXI.*

In order to terminate all differences on account of the losses sustained by the citizens of the United States in consequence of their vessels and cargoes having been taken by the subjects of His Catholic Majesty, during the late war between Spain and France, it is agreed that all such cases shall be referred to the final decision of Commissioners, to be appointed in the following manner. His Catholic Majesty shall name one Commissioner, and the President of the United States, by and with the advice and consent of their Senate, shall appoint another, and the said two Commissioners shall agree on the choice of a third, or if they cannot agree so, they shall each propose one person, and of the two names so proposed, one shall be drawn by lot in the presence of the two original Commissioners, and the person whose name shall be so drawn shall be the third Commissioner; and the three Commissioners so appointed shall be sworn impartially to examine and decide the claims in question, according to the merits of the several cases, and to justice, equity, and the laws of nations. The said Commissioners shall meet and sit at Philadelphia; and in the case of the death, sickness, or necessary absence of any such Commissioner, his place shall be supplied in the same manner as he was first appointed, and the new Commissioner shall take the same oaths, and do the same duties. They shall receive all complaints and applications author-

* This article is annulled by Article XII of the Treaty of February 22, 1819.

ized by this article, during eighteen months from the day on which they shall assemble. They shall have power to examine all such persons as come before them on oath or affirmation, touching the complaints in question, and also to receive in evidence all written testimony, authenticated in such manner as they shall think proper to require or admit. The award of the said Commissioners, or any two of them, shall be final and conclusive, both as to the justice of the claim and the amount of the sum to be paid to the claimants; and His Catholic Majesty undertakes to cause the same to be paid in specie, without deduction, at such times and places, and under such conditions as shall be awarded by the said Commissioners.

ARTICLE XXII.*

The two high contracting parties, hoping that the good correspondence and friendship which happily reigns between them will be further increased by this treaty, and that it will contribute to augment their prosperity and opulence, will in future give to their mutual commerce all the extension and favor which the advantage of both countries may require.

And in consequence of the stipulations contained in the IV article, His Catholic Majesty will permit the citizens of the United States, for the space of three years from this time, to deposit their merchandize and effects in the port of New-Orleans, and to export them from thence without paying any other duty than a fair price for the hire of the stores; and His Majesty promises either to continue this permission, if he finds during that time that it is not prejudicial to the interests of Spain, or if he should not agree to continue it there, he will assign to them on another part of the banks of the Mississippi an equivalent establishment.

ARTICLE XXIII.

The present treaty shall not be in force untill ratified by the contracting parties, and the ratifications shall be exchanged in six months from this time, or sooner if possible.

In witness whereof we, the underwritten Plenipotentiaries of His Catholic Majesty and of the United States of America, have signed this present treaty of friendship, limits, and navigation, and have thereunto affixed our seals respectively.

Done at San Lorenzo el Real, this seven and twenty day of October, one thousand seven hundred and ninety-five.

[SEAL.]
[SEAL.]

THOMAS PINCKNEY.
EL PRINCIPE DE LA PAZ.

The claims commission provided for in the foregoing treaty was duly appointed and met in Philadelphia, terminating their duties December 31, 1799, having made awards to the amount of \$325,440.07½ on account of Spanish spoliations.

* The second paragraph of this article is annulled by the XII article of the Treaty of February 22, 1819.