

PERU : JULY 26, 1851

Treaty of Friendship, Commerce, and Navigation, signed at Lima July 26, 1851. Original in English and Spanish.

Submitted to the Senate February 9, 1852. Resolution of advice and consent June 23, 1852. Ratified by the United States July 16, 1852. Ratified by Peru December 1, 1851. Ratifications exchanged at Washington July 16, 1852. Proclaimed July 19, 1852.

The United States of America and the Republic of Peru, being equally animated with the desire to render firm and permanent the peace and friendship which have always so happily subsisted between them, and to place their commercial relations upon the most liberal basis, have resolved to fix clear and precise rules, which shall in future be religiously observed between the two Nations, by means of a Treaty of Friendship, Commerce and Navigation.

To attain this desirable object, the President of the United States of America has conferred Full Powers on John Randolph Clay, the accredited Chargé d'Affaires of the said States to the Government of Peru, and the President of the Republic of Peru has conferred like Full Powers on Brigadier General, Don Juan, Crisostomo Torrico, Minister of War and the Marine, Minister

La República del Perú y los Estados Unidos de América hallándose igualmente animados con el deseo de hacer firmes y permanentes la paz y amistad que felizmente han subsistido siempre entre ellos, y de colocar sus relaciones de comercio bajo las bases mas liberales: han resuelto fijar reglas claras y precisas, las que se observarán religiosamente en lo sucesivo entre ambas naciones, por medio de un Tratado de Paz, Comercio y Navegación.

Y para lograr este deseado objeto: el Presidente de la Republica del Perú ha conferido plenos poderes al Jeneral de Brigada D. Juan Crisostomo Torrico, Ministro de Guerra y Marina, Encargado interinamente del Ministerio de Relaciones Exteriores: y el Presidente de los Estados Unidos ha conferido iguales plenos poderes al Señor Juan Randolph Clay Encargado de Negocios de

of Foreign Affairs ad interim &c. &c. who, after exchanging their respective Full Powers, found to be in good and due form, have agreed upon and concluded the following Articles:

ARTICLE I.

There shall be perfect and perpetual peace and friendship, between the United States of America and the Republic of Peru and between their respective territories, people and citizens, without distinction of persons, or places.

ARTICLE II.

The United States of America and the Republic of Peru mutually agree, that there shall be reciprocal liberty of Commerce and Navigation, between their respective territories and citizens; the citizens of either Republic may frequent with their vessels all the coasts, ports and places of the other, wherever foreign commerce is permitted, and reside in all parts of the territories of either and occupy dwellings and warehouses, and every thing belonging thereto shall be respected and shall not be subjected to any arbitrary visits, or search. The said citizens shall have full liberty to trade in all parts of the territories of either, according to the rules established by the respective regulations of Commerce, in all kinds of goods, merchandise, manufactures and produce not

los Estados Unidos. cerca del Gobierno del Perú: los cuales despues de haber canjeado sus respectivos poderes, y halládoslos en buena y debida forma han convenido en los articulos siguientes:

ARTICULO Iº

Habr  perfecta y perpetua paz y amistad entre la Rep blica del Per  y los Estados Unidos de Am rica y en entre sus respectivos territorios, pueblos y Ciudadanos sin distincion de persona   lugares.

ARTICULO IIº

La Rep blica del Per  y los Estados Unidos de Am rica convienen mutuamente en que habr  libertad reciproca de comercio y navegacion entre sus respectivos territorios y ciudadanos; los ciudadanos de cualquiera de las dos rep blicas podr n frecuentar con sus buques todas las Costas, puertos y lugares de la otra en que se permite el Comercio extranjero; residir en cualquier punto de los territorios de la otra y ocupar las casas y almacenes que necesiten; y todo lo que les pertenezca ser  respetado y exento de toda visita   pesquisa arbitraria. Dichos ciudadanos gozar n de entera libertad para comerciar en todas partes del territorio de la otra, segun las reglas establecidas por las respectivas leyes de comercio en todo g nero de efectos, mercade-

prohibited to all, and to open retail stores and shops, under the same municipal and police regulations as native citizens; and they shall not, in this respect, be liable to any other, or higher taxes, or imposts, than those which are or may be paid by native citizens. No examination, or inspection of their books, papers, or accounts, shall be made, without the legal order of a competent tribunal, or judge. The citizens of either country shall also have the unrestrained right to travel in any part of the possessions of the other, and shall, in all cases, enjoy the same security and protection as the natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing; they shall not be called upon for any forced loan, or occasional contribution, nor shall they be liable to any embargo, or to be detained with their vessels, cargoes, merchandise, goods, or effects, for any military expedition, or for any public purpose whatsoever, without being allowed therefor a full and sufficient indemnification, which shall, in all cases, be agreed upon and paid in advance.

ARTICLE III.

The two High Contracting Parties hereby bind and engage themselves; not to grant any favor, privilege, or immunity whatever, in matters of Com-

rias, manufacturas y productos de lícito comercio, y abrir tiendas y almacenes por menor sometiendo á las mismas leyes, decretos y usos establecidos para los ciudadanos del país; y no estarán sujetos á mayores contribuciones ó impuestos que los que pagan ó deban pagar los naturales. No se examinarán ó inspeccionarán los libros papeles ó cuentas que les pertenezcan sin mandato de un Tribunal ó Juez competente. Los ciudadanos de cualquiera de las dos partes tendrán tambien el derecho ilimitado de viajar por cualquier parte de las posesiones del otro, y en todos los casos gozarán de la misma seguridad y proteccion que los naturales del país donde residen, con condicion de someterse á las leyes y ordenanzas que en él se observen; no se les exigirá ningun empréstito forzoso ni ninguna contribucion accidental, ni estarán sujetos á ningun embargo ni á que se les detenga con sus buques, cargamentos, mercaderias ó efectos para ninguna expedicion militar ó para cualquier objeto público, sin concederles por ello una cumplida y suficiente indemnizacion que en todo caso se convenga y pague adelantada.

ARTICULO IIIº

Las dos Altas Partes Contratantes se obligan y comprometen á no conceder favor, privilegio ó exencion alguna sobre comercio y navegacion á otras naciones, sin

merce and Navigation, to other Nations, which shall not be, also, immediately extended to the citizens of the other contracting party, who shall enjoy the same, gratuitously, if the concession shall have been gratuitous, or on giving a compensation as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement, if the concession shall have been conditional.

ARTICLE IV

No higher or other duties, or charges, on account of tonnage, lighthouses, or harbour dues, pilotage, quarantine, salvage in case of damage or shipwreck, or any other local charges, shall be imposed in any ports of Peru on vessels of the United States, of the burthen of two hundred tons and upwards, than those payable in the same ports by Peruvian vessels of the same burthen; nor in any of the Ports of the United States, by Peruvian vessels, of the burthen of two hundred tons and upwards, than shall be payable, in the same ports, by vessels of the United States of the same burthen.

ARTICLE V.

All kinds of merchandise and articles of Commerce which may be lawfully imported into the ports and territories of either of the High Contracting Parties, in national vessels, may also be so imported in vessels of the other

hacerlos extensivos tambien inmediatamente á los ciudadanos de la otra parte contratante, que los gozará gratuitamente si la concesion hubiese sido gratuita, ó mediante igual compensacion, ú otra equivalente, que se arreglará de mútuo acuerdo, si la concesion hubiese sido condicional.

ARTICULO IV.

No se exigirán otros ó mas altos derechos en razon de toneladas, fano, puerto, pilotaje, cuarentena y salvamento en casos de avería ó naufragio, ni otros impuestos locales, en los puertos de la República del Perú á los buques de los Estados Unidos de mas de doscientas toneladas, que los que pagaren en dichos puertos los buques peruanos del mismo porte; ni en los puertos de los Estados Unidos á los buques peruanos de mas de doscientas toneladas, que los que pagaren en los mismos puertos los buques de los Estados Unidos de igual porte.

ARTICULO V.

Toda clase de mercaderias y articulos de Comercio que sean importados legalmente en los puertos y territorio de cualquiera de las Altas Partes Contratantes, en buques nacionales, podrán serlo tambien en los buques de la otra

party, without paying other or higher duties and charges, of any kind or denomination whatever, than if the same merchandise and articles of commerce were imported in national vessels. Nor shall any distinction be made in the manner of making payment of the said duties or charges.

It is expressly understood, that the stipulations in this and the preceding Article are, to their full extent, applicable to the vessels and their cargoes, belonging to either of the High Contracting Parties, arriving in the Ports and territories of the other, whether the said vessels have cleared directly from the ports of the country to which they appertain, or from the ports of any other nation.

ARTICLE VI.

No higher or other duties, or charges, shall be imposed or levied upon the importation into the ports and territories of either of the High Contracting Parties, of any Article, the produce, growth or manufacture of the other party than are or shall be payable on the like Article, being the produce growth or manufacture of any other country: nor shall any prohibition be imposed upon the importation of any article, the produce, growth or manufacture of either party, into the ports or territories of the other, which shall not equally extend to all other nations.

nacion sin pagar otros ó mas altos derechos é impuestos, cualquiera que sea su denominacion, que si las mismas mercaderias o artículos fuesen importados en buques nacionales. Ni se hará distincion alguna en los pagos de los mencionados derechos ó impuestos.

Queda expresamente convenido que las estipulaciones de este y del artículo anterior son aplicables en toda su estension á los buques y sus cargamentos pertenecientes á cualquiera de las Altas Partes Contratantes que lleguen á los puertos y territorios de la otra, ya sea en el caso de que dichos buques hayan salido directamente de los puertos del país á que pertenecen ó de los puertos de cualquiera otra Nacion.

ARTICULO VI.

No se exijirán otros ó mas altos derechos á la importacion en los puertos y territorios de cualquiera de las Altas Partes Contratantes, de cualquier artículo, producto ó manufactura de la otra que los que se pagan ó pagaren por el mismo artículo, producto, ó manufactura de cualquier otro país; ni se impondrá prohibicion alguna á la importacion de cualquier artículo, producto ó manufactura de cada una de las partes á los puertos ó territorios de la otra, sin que la prohibicion se estienda igualmente á todas las demás Naciones.

ARTICLE VII.

All kinds of merchandise and articles of Commerce which may be lawfully exported from the ports and territories of either of the High Contracting Parties, in national vessels, may also be exported in vessels of the other party and they shall be subject to the same duties only, and be entitled to the same drawbacks, bounties and allowances, whether the same merchandise and Articles of Commerce be exported in vessels of the one party or in vessels of the other party.

ARTICLE VIII.

No changes or alterations in the tariffs of either of the High Contracting Parties, *augmenting* the duties payable upon merchandise or articles of Commerce, of any sort or kind, imported into, or exported from their respective ports, shall be held to apply to the Commerce or navigation of either party, until the expiration of eight calendar months after the said changes or alterations shall have been promulgated and become a law, unless the law or decree, by which such changes or alterations shall be made, contain a prospective provision to the same, or similar effect.

ARTICLE IX.

It is hereby declared, that the stipulations of the present treaty

ARTICULO VII.

Toda clase de mercaderias y articulos de comercio que puedan exportarse legalmente de los puertos y territorios de cualquiera de las Altas Partes Contratantes en buques Nacionales podrán exportarse tambien en buques de la otra parte pagando estos únicamente los mismos derechos, y gozando de los mismos descuentos, primas y franquicias, que si la misma mercaderia ó los mismos articulos de Comercio se exportasen en buques de la una ó de la otra parte.

ARTICULO VIII.

Ningun cambio ó alteracion en las tarifas de una ú otra de las Altas Partes Contratantes *aumentando* los derechos que se paguen por las mercaderias ó articulos de comercio de cualquier especie ó clase que sean importados en sus respectivos puertos ó exportados de ellos, se aplicará ó tendrá efecto para el comercio ó la navegacion de una ú otra parte hasta que se cumplan ocho meses despues que dichos cambios ó alteraciones se hayan promulgado como ley, á no ser que la ley ó decreto por el que tales cambios ó alteraciones se hagan contenga alguna disposicion que tienda á producir el mismo ó semejante efecto.

ARTICULO IX.

Se declara así mismo que las estipulaciones del presente tra-

are not to be understood as applying to the navigation and coasting trade, between one port and another situated in the territories of either contracting Party—the regulation of such navigation and trade being reserved, respectively, by the Parties, according to their own separate laws.

Vessels of either Country shall however be permitted to discharge part of their cargoes at one port open to foreign commerce in the territories of either of the High Contracting Parties, and to proceed with the remainder of their cargo to any other port, or ports, of the same territories, open to foreign commerce, without paying other or higher tonnage dues or port charges, in such cases, than would be paid by national vessels in like circumstances, and they shall be permitted to load in like manner at different ports in the same voyage outwards.

ARTICLE X.

The Republic of Peru desiring to increase the intercourse along its coasts, by means of Steam Navigation, hereby engages to accord to any citizen or citizens of the United States, who may establish a line of Steam vessels, to navigate, regularly, between the different ports of entry, within the Peruvian territories, the same privileges of taking in and landing freight, entering the by-ports for

tado no se considerarán aplicables á la navegacion y Comercio de cabotaje, entre un puerto y otro situado en el territorio de cualquiera de las Partes Contratantes, pues la regulacion de este Comercio está reservada respectivamente á las leyes particulares de cada una de las partes.

Sin embargo, los buques de cualquiera de los dos paises podran descargar parte de sus cargamentos en un puerto habilitado para el comercio extranjero perteneciente al territorio de cualquiera de las Altas Partes Contratantes y continuar con el resto de su carga á cualquier otro puerto ó puertos del mismo pais abiertos al Comercio extranjero, sin pagar otros ó mayores derechos de toneladas ó de puerto, que los que pagan en tales casos los buques nacionales en circunstancias análogas; y del mismo modo se les permitirá cargar en diferentes puertos en el mismo viaje para otros paises.

ARTICULO X.

Deseando la República del Perú aumentar la comunicacion entre los puntos de su costa por medio de la navegacion por Vapor, se compromete desde ahora á conceder á cualquier ciudadano ó ciudadanos de los Estados Unidos que establezcan una linea de Vapores para navegar con regularidad entre los diferentes puertos de entrada en el territorio peruano, los mismos privilegios para

the purpose of receiving and landing passengers and their baggage, specie and bullion; carrying the public mails, establishing depots for coal, erecting the necessary machine and workshops, for repairing and refitting the Steam vessels; and all other favors enjoyed by any other association or company whatsoever.

It is, furthermore, understood, between the Two High Contracting Parties, that the Steam vessels of either shall not be subject, in the ports of the other Party, to any duties of tonnage, harbor or other similar duties whatsoever, than those that are or may be paid by any other association or Company.

ARTICLE XI.

For the better understanding of the preceding Articles, and taking into consideration the actual State of the commercial marine of Peru, it is stipulated and agreed that every vessel, belonging exclusively to a citizen or citizens of the said Republic, and of which the Captain is also a citizen of the same, though the construction or the crew is, or may be, foreign, shall be considered, for all the objects of this treaty, as a Peruvian vessel.

ARTICLE XII.

The Whale Ships of the United States shall have access to the

embarcar y desembarcar carga ó flete, entrar en los puertos intermedios con objeto de recibir y desembarcar pasajeros y sus equipajes, dinero y plata en barras, llevar las balijas de correos, formar depósitos para Carbon, establecer maquinas y talleres para reparar y carenar los Vapores, y todos los demás favores que goce cualquiera otra sociedad ó compañía.

Conviene además las Altas Partes Contratantes en que los Vapores de cualquiera de ellas no estarán obligados á pagar en los puertos de la otra ninguna clase de derechos de tonelaje, puerto ni otros semejantes que los que pagan ó pagaren los de cualquiera otra sociedad ó compañía.

ARTICULO XI.

Para la mejor inteligencia de los Artículos precedentes y teniendo en consideracion el estado actual de la marina mercante del Perú, se ha estipulado y convenido que todo buque perteneciente exclusivamente á ciudadano ó ciudadanos de dicha República, y cuyo Capitan sea tambien ciudadano de ella, aunque la construccion y tripulacion del buque sean extranjeras, será considerado para todos los efectos de este tratado como buque peruano.

ARTICULO XII.

Los buques balleneros de los Estados Unidos podran entrar en

port of Tumbes,¹ as well as to the ports of entry in Peru, and may sail from one port to another for the purposes of refreshment and refitting, and they shall be permitted to sell or barter their supplies, or goods, including Oil, to the amount of two hundred dollars, *ad valorem*, for each vessel; without paying any tonnage or harbour dues, or any duties or imposts upon the articles so sold or bartered. They shall be also permitted, with like exemption from tonnage and harbour dues, further to sell or barter, their supplies, or goods, including oil, to the additional amount of one thousand dollars, *ad valorem*, for each vessel; upon paying for the said additional articles, the same duties as are payable upon like supplies, or goods, and oil, when imported in the vessels and by the citizens, or subjects, of the most favored nation.

ARTICLE XIII.

The merchants, commanders, or masters of vessels and other citizens of either contracting party, shall be wholly free to manage their own business and affairs, in all the ports and places within the jurisdiction of the other, or to commit their business and affairs to the management of any person whom they may choose to appoint, as agent, factor, consignee,

el puerto de Tumbes,¹ y en los puertos mayores del Perú, y pasar de uno á otro, con el objeto de tomar viveres y repararse, y les será permitido vender ó cambiar sus provisiones ó mercaderías, inclusive el aceite hasta la cantidad de doscientos pesos *ad valorem* por cada buque, sin que estén obligados á pagar los derechos de toneladas ó de puerto, ni derecho alguno ó impuesto por los artículos vendidos ó cambiados de esta manera. Se les permitirá además con la misma excención de los derechos de toneladas y puerto, vender ó cambiar sus provisiones ó mercaderías, incluso el aceite, hasta la suma adicional de mil pesos *ad valorem* por cada buque, pagando por la parte adicional de dichos artículos los mismos derechos que se satisfacen por iguales provisiones ó mercaderías y aceite cuando se importan en buques y por ciudadanos ó súbditos de la nacion mas favorecida.

ARTICULO XIII.

Los negociantes, Capitanes de buques y todos los ciudadanos de cada una de las Partes Contratantes tendran en los territorios de la otra plena libertad para manejar por sí sus negocios ó encomendarlos á la persona que quieran emplear como agente, corredor, factor ó intérprete. No se les obligará á que empleen personas determinadas para el desempeño de

¹ Tumbes is approximately in latitude 3°38' south.

or interpreter. They shall not be restrained in the choice of persons to act in such capacities, or be compelled to pay any salary, or remuneration, to any one whom they do not wish to employ. Absolute freedom shall be given, as well with respect to the consignment and sale of their merchandise and articles of commerce, as to the purchase of their returns, unloading, loading and sending off their vessels. The buyer and seller shall have full liberty to bargain together and fix the price of any merchandise, or articles of Commerce, imported into, or to be exported from the territories of either contracting Party, the regulations of Commerce, established in the respective countries, being in every case, duly observed.

ARTICLE XIV.

Peruvian citizens shall enjoy the same privileges, in frequenting the mines and in digging or working for gold, upon the public lands situated in the State of California, as are, or may be hereafter accorded by the United States of America, to the citizens or subjects of the most favored nation.

ARTICLE XV.

The citizens of either of the High Contracting Parties shall have the full power and liberty to dispose of their personal property and effects, of every kind and description, within the jurisdiction of

estos servicios, ni tampoco á dar ningun salario ó remuneracion á quien no quieran ocupar. Gozarán de libertad absoluta, así para consignar y vender sus mercaderias y artículos de comercio, como para comprar los retornos, descargar, cargar y despachar sus buques. El comprador y vendedor tendrán plena libertad para arreglar entre sí y fijar el precio de cualquiera mercancia ó efectos de comercio que se hayan de importar ó de exportar de los territorios de cualquiera de ambas partes Contratantes, observandose en todo caso los reglamentos de Comercio vijentes en los respectivos paises.

ARTICULO XIV.

Los Ciudadanos del Perú gozaran los mismos privilegios que se conceden ó se puedan conceder en adelante por los Estados Unidos de América á los Ciudadanos ó subditos de la nacion mas favorecida cuando concurren á las minas y extraigan ó busquen el oro en las tierras públicas situadas en el Estado de California.

ARTICULO XV.

Los Ciudadanos de cada una de las Partes Contratantes podrán disponer de sus efectos personales dentro de la jurisdiccion de la otra, por venta, donacion, testamento, ó de cualquier otro modo.

the other, by sale, donation, testament or otherwise; and their heirs or representatives, being citizens of the other party, shall succeed to their said personal property and effects, whether by testament, or *ab intestato*, and may take possession of the same, themselves, or by others acting for them, and dispose of the same at their pleasure, paying such dues, only, as the inhabitants of the country, wherein said effects may be, shall be subject to pay in like cases. Should the property consist of real estate and the heirs, on account of their character as Aliens, be prevented from entering into possession of the inheritance, they shall be allowed the term of three years, to dispose of the same and withdraw and export the proceeds, which they may do, without any hindrance and without paying any other dues or charges, than those which are established by the laws of the country.

ARTICLE XVI.

If any vessel belonging to the citizens of either of the High Contracting Parties should be wrecked, suffer damage, or be left derelict, on or near the coasts within the territories of the other, all assistance and protection shall be given to such vessel and her crew, and the vessel or any part thereof, and all furniture and appurtenances belonging thereto, together with all the merchandise,

y sus herederos ó representantes, si son Ciudadanos de la otra parte sucederán en los susodichos efectos personales, ya sea por testamento ó *ab intestato*: y pueden tomar posesion de ellos, bien por sí mismos, ó por otros que obren en su nombre, y disponer de ellos á su voluntad; pagando únicamente aquellos derechos á que en tales casos estan sujetos los habitantes del pais donde se hallan los efectos precitados. Y sí, en el caso de ser bienes raices, estuviesen impedidos los susodichos herederos de entrar en posesion de la herencia, en razon de ser extranjeros, se les concederá el termino de tres años para que dispongan de ellos segun lo estimen conveniente, y para exportar su producto; lo cual podran hacer sin obstáculo y sin pagar otros derechos ó impuestos que aquellos de que en jeneral imponen las leyes del pais.

ARTICULO XVI.

En caso que un buque perteneciente á ciudadanos de cualquiera de las Partes Contratantes naufragase, sufriese averia, ó fuese abandonado (derelicto) en las costas, ó cerca de las Costas, de la otra, se dará á dicho buque y á su tripulacion toda asistencia y proteccion; y el buque, cualquiera parte de él, todos los articulos que le pertenecen, y las mercaderias que de él se sal-

which shall be saved therefrom, or the produce thereof, if sold, shall be faithfully restored to the owners, or their agents, they paying only the expenses incurred in the preservation of the property, together with the rate of salvage, which would have been payable in the like case by national vessels; and it shall be permitted for them to unload the merchandise and effects on board, with the proper precautions to prevent their illicit introduction, without exacting in such case any duty, impost or contribution whatever, provided the same be exported.

ARTICLE XVII.

When through stress of weather, want of water or provisions, pursuit of enemies or pirates, the vessels of one of the High Contracting Parties, whether of war (public or private) or of trade, or employed in fishing, shall be forced to seek shelter in the ports, rivers, bays and dominions of the other, they shall be received and treated with humanity: sufficient time shall be allowed for the completion of repairs, and while any vessel may be undergoing them, its cargo shall not, unnecessarily, be required to be landed, either in whole or in part: all assistance and protection shall be given to enable the

varen, ó el producto de los mismos, si se vendieren, serán fielmente entregados á sus dueños ó agentes, pagando únicamente los gastos hechos para conservar los efectos, y los derechos de salvamento que hubiera pagado en semejante caso un buque nacional. Y se permitirá en este caso descargar las mercaderías ó efectos que se hallen á bordo con las precauciones necesarias para prevenir su ilícita introduccion, sin que se exija ningun impuesto ó contribución, con tal de que sean exportados.

ARTICULO XVII.

Cuando á causa de mal tiempo, falta de agua ó de viveres, persecucion de enemigos ó de piratas los buques de una de las Altas Partes Contratantes, de guerra ó mercantes, ó empleados en la pesca, se vean obligados á buscar abrigo en los puertos, rios ó lugares de los dominios de la otra, serán recibidos y tratados con humanidad; se les concederá el tiempo suficiente para que terminen sus reparos, y mientras cualquier buque se halle en este caso no se le exigirá que descargue en todo ó en parte, á no ser preciso, prestandole todo favor y proteccion para que se proporcione auxilios y se ponga en

vessels to procure supplies and to place them in a condition to pursue their voyage, without obstacle or hindrance.

ARTICLE XVIII.

All vessels, merchandise and effects, belonging to the citizens of either of the High Contracting Parties, which may be captured by Pirates, either on the high seas or within the limits of its jurisdiction, and may be carried into, or found in the rivers, roads, bays, ports or dominions of the other, shall be delivered up to the owners or their agents, they proving, in due and proper form, their rights before the competent tribunals; it being understood, that the claim thereto shall be made within two years, by the owners themselves, their agents or the agents of the respective Governments.

ARTICLE XIX.

The High Contracting Parties promise and engage, to give full and perfect protection to the persons and property of the citizens of each other, of all classes and occupations, who may be dwelling or transient in the territories, subject to their respective jurisdiction: they shall have free and open access to the tribunals of justice for their judicial recourse, on the same terms as are usual and customary with the natives or citizens of the country in which they may be, and they shall be at liberty

estado de proseguir su viaje sin obstáculo ó molestia.

ARTICULO XVIII.

Todos los buques, mercaderias, y efectos pertenecientes á Ciudadanos de una de las Altas Partes Contratantes que sean apresados por piratas, bien en Alta Mar ó dentro de los limites de su jurisdiccion, y que fuesen llevados ó encontrados en los rios, radas ó bahias, puertos ó dominios de la otra, serán entregados á los dueños ó á sus agentes, con tal que prueben en propia y debida forma sus derechos ante los Tribunales competentes: debiendo entenderse que el reclamo ha de hacerse dentro del término de dos años por las mismas partes, sus agentes ó los de sus respectivos Gobiernos

ARTICULO XIX.

Las Altas Partes Contratantes ofrecen y se comprometen á dar la mas cumplida proteccion á las personas y propiedades de los ciudadanos de una ú otra, de todas clases y ocupaciones, que puedan estar en los territorios sujetos á su respectiva jurisdiccion, ya sean transeuntes ó domiciliados; dandoles libre acceso ante los Tribunales de justicia para sus recursos judiciales, en los mismos términos que son de uso y costumbre con los naturales ó ciudadanos del pais en donde se

to employ in all causes, the advocates, attornies, notaries or agents of whatever description, whom they may think proper.

The said citizens shall not be liable to imprisonment, without formal commitment under a warrant signed by a legal authority, except in cases *flagrantis delicti*, and they shall, in all cases, be brought before a magistrate, or other legal authority, for examination, within twenty four hours after arrest, and, if not so examined, the accused shall, forthwith, be discharged from custody. Said citizens, when detained in prison shall be treated, during their imprisonment, with humanity and no unnecessary severity shall be exercised towards them.

ARTICLE XX.

It is likewise agreed, that perfect and entire liberty of conscience shall be enjoyed by the citizens of both the contracting parties, in the countries subject to the jurisdiction of the one or the other, without their being liable to be disturbed or molested on account of their religious belief, so long as they respect the laws and established usages of the country.

Moreover, the bodies of the citizens, of one of the contracting parties, who may die in the territories of the other, shall be buried

hallen; para cuyo efecto podrán emplear en defensa de sus derechos los Abogados, procuradores, escribanos y agentes de cualquier clase que crean conveniente.

Dichos ciudadanos no podrán ser presos sin que preceda un auto de prision y en vista de una orden firmada por una autoridad legal, escepto en los casos de delito *infraganti*, y siempre se les hará comparecer ante un juez ú otra autoridad legal para tomarle declaraciones dentro del término de veinticuatro horas despues del arresto, y sí en ese tiempo no se le han tomado declaraciones, el acusado será puerto inmediatamente en libertad. Cuando se detenga á los dichos Ciudadanos se les tratará con humanidad durante su prision y no se empleará con ellos ningun rigor innecesario.

ARTICULO XX.

Se conviene así mismo en que los ciudadanos de las dos Partes Contratantes, disfrutarán entera y perfecta libertad de conciencia en los países sometidos á la jurisdiccion de la una y de la otra, sin estar sujetos á ser perturbados ó molestados á causa de su creencia relijiosa, en tanto que respeten las leyes y usos establecidos del país. Además los cuerpos de los ciudadanos de una de las partes contratantes que murieren en los territorios de la otra, serán enterrados en los lugares de costumbre, ó en otros

in the usual burying grounds, or in other decent and suitable places, and shall be protected from violation or disturbance.

ARTICLE XXI.

The citizens of the United States of America and of the Republic of Peru may sail with their vessels, with entire freedom and security from any port, to the ports or places of those who now are or hereafter shall be enemies of either of the contracting parties, whoever may be the owners of the merchandise laden in the said vessels. The same citizens shall also be allowed to sail with their vessels, and to carry and traffic with their merchandise, from the ports and places of the enemies of both parties, or of one of them, without any hindrance, not only to neutral ports and places, but also from one port belonging to an enemy to another enemy's port, whether they be under the jurisdiction of one power or under several. And it is agreed, that free ships shall give freedom to goods, and that every thing shall be deemed free, which shall be found on board the vessels belonging to the citizens of either of the contracting parties, although the whole lading, or a part thereof, should belong to the enemies of either; articles, contraband of war being always excepted. The same liberty shall be extended to persons, who

lugares propios y decentes, y serán protegidos de toda violacion ó falta de respeto.

ARTICULO XXI.

Los ciudadanos de la República del Perú y los de los Estados Unidos de América, podran navegar con sus buques en perfecta libertad y seguridad, sin que se haga distincion de quienes sean los dueños de las mercaderias que tengan á su bordo, de cualquier puerto ó lugar á los puertos y lugares de aquellos que en la actualidad son ó fueren en lo sucesivo enemigos de una de las partes contratantes. Será asimismo licito á los predichos ciudadanos navegar con los buques y mercaderias arriba mencionadas, y comerciar con la misma libertad y seguridad, de los lugares, puertos y bahias de aquellos que son enemigos de una de las dos partes, ó de ambas, sin ninguna oposicion ó impedimento, no solo directamente de los lugares del enemigo ya nombrado, á los lugares neutrales, sino tambien de un lugar perteneciente á un enemigo á otro puerto tambien del enemigo, bien sea que estén bajo la jurisdiccion de una misma potencia, ó bajo la de varias. Y queda convenido que los buques libres harán libres las mercaderias y que se reputará libre todo lo que se encuentre á bordo de los buques pertenecientes á los ciudadanos de cualquiera de las partes

may be on board free ships, so that said persons cannot be taken out of them, even if they may be enemies of both parties, or of one of them, unless they are officers or soldiers in the actual service of the enemy. It is agreed, that the stipulations in this article, declaring that the flag shall cover the property shall be understood as applying to those nations only who recognize this principle; but if either of the contracting parties shall be at war with a third, and the other shall remain neutral, the flag of the neutral shall cover the property of enemies whose governments acknowledge this principle and not that of others.

ARTICLE XXII.

When the neutral flag of one of the contracting parties shall protect the property of the enemies of the other, in virtue of the preceding article, neutral property found on board enemies' vessels shall likewise be considered as enemies' property, and shall be subject to detention and confiscation, unless it shall have been put on board before the declaration of war, or even afterwards, if it were done without knowledge

contratantes, aunque todo el Cargamento, ó una parte de él pertenezca á enemigos de la otra, exceptuandose siempre los efectos de contrabando de guerra. La misma libertad se estenderá á las personas que estén á bordo de un buque libre, de suerte que dichas personas no podrán ser arrestadas ni sacadas de esos buques aunque sean enemigos de una de las partes ó de ambas á menos que sean oficiales ó soldados y en actual servicio del Enemigo. Y se conviene, que las estipulaciones contenidas en este articulo, declarando que el pabellon cubrirá la propiedad son aplicables á aquellas potencias solamente que reconocen este principio; pero sí alguna de las partes Contratantes estuviere en guerra con una tercera, y la otra fuere neutral, el pabellon del neutral cubrirá la propiedad de aquellos enemigos cuyos Gobiernos reconocen este principio y no la de los otros.

ARTICULO XXII.

En los casos en que el pabellon neutral de una de las partes contratantes proteja la propiedad de los enemigos de la otra, en virtud de la precedente estipulacion, la propiedad neutral que se hallare á bordo de los buques del enemigo se considerará del mismo modo como propiedad enemiga, y estará sujeta á detencion y confiscacion á menos que hubiere sido puesta á bordo de tales buques ántes de la declaracion de

of such declaration; but the contracting parties agree that ignorance cannot be alleged after the lapse of six months from the declaration of war. On the contrary, in those cases where the flag of the neutral does not protect enemies' property which may be found on board, the goods or merchandise of the neutral embarked in enemies' vessels shall be free.

ARTICLE XXIII.

The liberty of commerce and navigation, stipulated for in the preceding Articles, shall extend to all kinds of merchandise, except the articles called contraband of War, under which name shall be comprehended—1st. Cannons, mortars, howitzers, swivels, blunderbusses, muskets, fuses, rifles, carbines, pistols, pikes, swords, sabres, lances, spears, halberds, grenades, bombs, powder, matches, balls and every thing belonging to the use of these arms.

2nd. Bucklers, helmets, breastplates, coats of mail, accoutrements and clothes made up in military form and for military use.

3^d. Cavalry belts and horses, with their harness.

4th. And generally all offensive or defensive arms made of iron, steel, brass, copper, or of any other material, prepared and

la guerra, ó aun despues sí se hubiere hecho sin conocimiento de la tal declaracion; pero las partes contratantes convienen que no podra alegarse ignorancia seis meses despues de la declaracion de la guerra. Por el contrario en aquellos casos en que el pabellon del neutral no proteje la propiedad enemiga que se encuentre á bordo, los efectos y mercaderias del neutral embarcadas en tales buques enemigos serán libres.

ARTICULO XXIII.

La libertad de Comercio y navegacion estipulada en los articulos anteriores se estenderá á toda especie de mercaderias, exceptuandose únicamente aquellos articulos que se llaman contrabando de guerra, bajo cuya denominacion se comprenden: 1^o canoñes, morteros, obuses, pedreros, trabucos, mosquetes, fusiles, rifles, carabinas, pistolas, picas, espadas, sables, lanzas, chuzos, alabardas, granadas y bombas, polvora, mechas, balas con las demás cosas correspondientes al uso de estas armas: 2^o escudos, casquetes, corazas, cotas de malla, fornituras y bestidos hechos en forma y para uso militar: 3^o bandoleras y caballos junto con sus arneses: 4^o y generalmente toda especie de armas ofensivas y defensivas hechas de hierro, acero, bronce, cobre y otros materiales manufacturadas,

formed to make war by land or at sea.

ARTICLE XXIV.

All other merchandise and things not comprehended in the articles of contraband, explicitly enumerated and classified as above, shall be held and considered as free, and subjects of free and lawful commerce, so that they may be carried and transported in the freest manner by both the contracting parties, even to places belonging to an enemy, excepting only those places, which are at that time besieged or blockaded; and to avoid all doubt in this particular, it is declared, that those places only shall be considered as besieged or blockaded, which are actually invested or attacked by a force capable of preventing the entry of the neutral.

ARTICLE XXV.

The articles of contraband, or those before enumerated and classified, which may be found in a vessel bound for an enemy's port, shall be subject to detention and confiscation; but the rest of the cargo and the ship shall be left free, that the owners may dispose of them, as they see proper. No vessel of either of the contracting parties shall be detained on the high seas, on account of having on board articles of contraband, whenever the master, captain, or

preparadas y formadas expresamente para hacer la guerra por mar ó por tierra.

ARTICULO XXIV.

Cualesquiera otras mercaderias y cosas no comprendidas en los articulos de contrabando explicitamente enumerados y clasificados arriba, se tendrán y considerarán libres y materia de libre y legitimo comercio; de manera que puedan ser llevadas y trasportadas en el modo mas libre por las dos partes contratantes, aun á los lugares pertenecientes á un enemigo, exceptuando unicamente aquellos lugares que estén en aquel tiempo sitiados ó bloqueados; y para evitar toda duda sobre el particular se declara que únicamente se considerarán sitiados ó bloqueados aquellos lugares que se hallen á la sazón atacados por una fuerza capaz de impedir la entrada del Neutral.

ARTICULO XXV

Los articulos de contrabando, ó los ya enumerados y clasificados que se encuentren en un buque destinado á un puerto enemigo, estarán sujetos á detencion y confiscacion; pero el resto del cargamento y el buque se dejarán libres para que los dueños puedan disponer de ellos segun estimen conveniente. Ningun buque de ninguna de las partes Contratantes será detenido en alta mar por tener á bordo articulos de contrabando, siempre que el maestre,

supercargo of said vessel will deliver up the articles of contraband to the captor; unless indeed, the quantity of such articles be so great, or of so large bulk, that they cannot be received on board the capturing vessel without great inconvenience; but in this and all other cases of just detention, the vessel detained shall be sent to the nearest convenient and safe port for trial and judgment according to law.

ARTICLE XXVI.

And whereas it frequently happens that vessels sail for a port or place belonging to an enemy, without knowing that the same is besieged, blockaded, or invested, it is agreed, that every vessel so circumstanced may be turned away from such port or place, but shall not be detained; nor shall any part of her cargo, if not contraband, be confiscated, unless, after having been warned of such blockade or investment by the commanding officer of a vessel, forming part of the blockading forces, she again attempt to enter, but she shall be permitted to go to any other port or place, the master or supercargo may think proper. Nor shall any vessel of either party, that may have entered into such port or place before the same was actually besieged, blockaded, or invested by the other be restrained from leaving it with her cargo; nor if found therein before or after the

capitan ó sobre-cargo del susodicho buque entregue los articulos de contrabando al apresador; á menos que sea tan grande y de tanto volumen la cantidad de los tales articulos que no puedan recibirse á bordo del buque apresador sin gran inconveniente; pero en este y en todos los otros casos de justa detencion, el buque detenido será enviado al puerto mas inmediato, cómodo y seguro, para ser juzgado con arreglo á las leyes.

ARTICULO XXVI.

Y como frecuentemente sucede que navegan buques para un puerto ó lugar perteneciente á un enemigo sin saber que él mismo está sitiado, bloqueado ó atacado, se conviene que todo buque que se halle en este caso, sea rechazado del tal puerto ó lugar, pero no detenido, ni confiscada, ninguna parte de su cargamento que no sea contrabando, á menos que despues de notificarsele el bloqueo ó ataque por el oficial que mande un buque que forme parte de las fuerzas bloqueadoras intentase de nuevo entrar; pero se le permitirá ir á cualquiera otro puerto ó lugar que juzgue oportuno el maestre ó sobrecargo. Y á ningun buque de una ú otra parte que hubiere entrado en un puerto ó lugar ántes de que el mismo, fuese sitiado, bloqueado ó atacado por la otra, se le impedirá que salga con su cargamento; ni si se encontrase allí ántes ó despues de la reduccion y

reduction and surrender, shall such vessel or her cargo be liable to seizure, confiscation, or any demand on the score of redemption or restitution; but the owners thereof shall remain in the undisturbed possession of their property. And if any vessel, having thus entered the port before the blockade took place, shall take on board a cargo, after the blockade be established, and attempt to depart, she may be warned by the blockading forces, to return to the blockaded port, and discharge the said cargo; and if, after receiving such warning, the vessel shall persist in going out with the cargo, she shall be liable to the same consequences, as in the case of a vessel attempting to enter a blockaded port after having been warned off by the blockading forces.

ARTICLE XXVII.

To prevent disorder and irregularity in visiting and examining the vessels and cargoes of both the contracting parties, on the high seas, they have agreed, mutually, that whenever a vessel of war, public or private, shall meet with a neutral of the other party, the former shall remain at the greatest distance compatible with the possibility and safety of making the visit under the circumstances of wind and sea and the degree of suspicion attending the vessel to be visited and shall send one of her small boats with

entrega estará sujeto el tal buque ó su cargamento, á apresamiento, confiscacion ó demanda alguna por causa de redencion ó restitucion, sino que se dejará á sus dueños en tranquila posesion de su propiedad. Y sí algun buque que hubiere entrado en el puerto ántes de tener lugar el bloqueo, tomase carga á bordo despues de establecido el bloqueo, é intentase salir, se le podrá intimar por las fuerzas bloqueadoras que vuelva al puerto bloqueado y descargue su cargamento; y sí despues de recibir la dicha intimacion insistiere el buque en salir con el cargamento, estará sujeto á las mismas consecuencias á que lo estaria una embarcacion que intentase entrar en un puerto bloqueado, despues de ser intimada por las fuerzas bloqueadoras.

ARTICULO XXVII.

Para impedir todo género de desorden é irregularidad en la visita y examen de los buques y cargamentos de las dos partes contratantes en alta mar, han convenido mutuamente, que cuando un buque de guerra, público ó particular encontrare á un neutral de la otra parte contratante, el primero permanecerá á la mayor distancia que sea compatible con la posibilidad y la seguridad de hacer la visita, atendidas las circunstancias del viento y de la mar, y el grado de sospecha que inspire el bajel que ha de ser visitado, y enviará

no more men, than may be necessary to execute the said examination of the papers concerning the ownership and cargo of the vessel, without causing the least extortion, violence, or ill-treatment in respect of which, the commanders of said armed vessels, shall be responsible with their persons and property; for which purpose, the commanders of said private armed vessels shall, before receiving their commissions, give sufficient security, to answer for all the injuries and damages they may commit. And it is expressly agreed that the neutral party shall in no case be required to go on board of the examining vessel for the purpose of exhibiting the ship's papers; nor for any other purpose whatever.

ARTICLE XXVIII.

Both contracting Parties likewise agree, that when one of them shall be engaged in War, the vessels of the other must be furnished with sea letters, patents or passports, in which shall be expressed the name, burthen of the vessel and the name and place of residence of the owner, and master, or Captain, thereof, in order that it may appear that the vessel really and truly belongs to citizens of the said other party. It is also agreed, that such vessels being laden, besides the said sea letters, patents, or passports, shall be pro-

uno de sus botes pequeños sin mas jente que la necesaria para tripularlo, con el objeto de ejecutar el predicho examen de los papeles relativos á la propiedad y cargamento del buque, sin causar la menor estorcion, violencia ó maltratamiento; respecto á lo cual los Comandantes de los susodichos buques armados, serán responsables con sus personas y propiedades; para cuyo fin los Comandantes de los predichos buques particulares armados, ántes de recibir sus comisiones, darán la suficiente seguridad para responder por todos los daños y perjuicios que cometieren. Y se conviene expresamente que en ningun caso se requerirá que la parte neutral vaya á bordo del buque que hace la visita, ni para exhivir sus papeles ni para ningun otro objeto.

ARTICULO XXVIII.

Ambas partes contratantes convienen que en el caso que una de ellas estuviere empeñada en guerra, los buques de la otra deben estar provistas de letras de mar, patentes ó pasaportes, en que se expresen el nombre y tamaño del buque, como tambien el nombre y el lugar de la residencia de su dueño, maestre ó Capitán, á fin de que aparezca por ellos que el susodicho buque pertenece real y verdaderamente á ciudadanos de la dicha otra parte. Y han convenido así mismo en que los dichos buques,

vided with Manifests or certificates, containing the particulars of the cargo and the place where it was taken on board, so that it may be known whether any part of the same consists of contraband or prohibited articles.—which certificates shall be made out, in the accustomed form, by the authorities of the port whence the vessel sailed: without which requisites the vessel may be detained, to be adjudged by the competent tribunales and may be declared good and legal prize, unless it shall be proved, that the said defect or omission was owing to accident, or unless it shall be satisfied, or supplied, by testimony equivalent in the opinion of the said tribunals, for which purpose there shall be allowed a reasonable length of time to procure and present it.

ARTICLE XXIX.

The preceding stipulations relative to the visit and examination of vessels, shall apply only to those which sail without convoy; for when said vessels shall be under convoy, the verbal declaration of the commander of the convoy, on his word of honor, that the vessels under his protection belong to the nation whose flag they carry, and when they are bound to an enemy's port, that they have no contraband

estando cargados, llevarán además de las mencionadas letras de mar, patentes ó pasaportes, manifiestos ó certificados que contengan los diferentes pormenores del cargamento, y el lugar donde fué embarcado; de manera que se sepa si hay á su bordo efectos prohibidos ó de contrabando, dichos certificados serán expedidos por las autoridades del lugar de donde salió el buque en la forma acostumbrada, sin cuyos requisitos, el susodicho buque puede ser detenido para ser adjudicado por los Tribunales competentes y puede ser declarado presa legal, á menos que se pruebe que el precitado defecto proviene de accidente, ó sea satisfecho ó suplido por un testimonio del todo equivalente, en la opinion de los susodichos Tribunales; á cuyo fin se concederá un término suficiente para proporcionarselo.

ARTICULO XXIX.

Las estipulaciones arriba expresadas, relativas á la visita y examen de los buques, se aplicarán solamente á aquellos que navegan sin convoy; y cuando los dichos buques fueren convoyados, la declaracion verbal del Comandante del convoy, bajo su palabra de honor, de que los bajeles que estan bajo su proteccion pertenecen á la nacion cuya bandera tremola él, y cuando su destino es

goods on board, shall be sufficient.

á un puerto enemigo, de que no tienen á bordo efectos de contrabando, será considerada suficiente.

ARTICLE XXX.

It is further agreed, that in all prize cases the courts specially established for such causes, in the country to which the prizes may be conducted, shall alone take cognizance of them. And whenever such courts of either party shall pronounce judgment against any vessel, merchandise, or property, claimed by the citizens of the other party, the sentence or decree shall set forth the reasons or motives on which the same shall have been founded, and an authenticated copy of the sentence, or decree and of all the proceedings, connected with the case shall, if demanded, be delivered to the commander, or agent, of the said vessel, merchandise or property, without any excuse or delay, upon payment of the established legal fees for the same.

ARTICULO XXX.

Se conviene así mismo que, en todo caso de presas los Tribunales establecidos para tales causas en el país á que puedan ser conducidas las presas, serán los únicos que tomen conocimiento de ellas. Y siempre que semejantes Tribunales de una ú otra parte pronunciaren sentencia contra algun buque, efectos ó propiedad reclamados por ciudadanos de la otra parte, la sentencia ó decision mencionará las razones ó motivos en que se ha fundado, y se entregará al Comandante ó Ajente del dicho buque ó propiedad sin excusa ó demora alguna, si él lo pidiere, una copia autentica de la sentencia ó decision, y de todos los procedimientos del caso, con tal que pague por ello los derechos ó gastos legales.

ARTICLE XXXI.

Whenever one of the contracting parties shall be engaged in war with another Nation, no citizen of the other contracting party shall accept a commission or letter of marque, for the purpose of assisting or co-operating hostilely with the said enemy against the said party so at war, under pain of being treated as a pirate.

ARTICULO XXXI.

Siempre que una de las partes contratantes estuviere empeñada en guerra con otra nacion, ningun ciudadano de la otra parte contratante aceptará comision ó letra de marca con el objeto de ayudar ó cooperar hostilmente con el susodicho enemigo contra la predicha parte que está en guerra, so pena de ser tratado como pirata.

ARTICLE XXXII.

If, which is not to be expected, a rupture should at any time take place between the two contracting nations, and they should engage in war with each other, they have agreed, now for then, that the merchants, traders, and other citizens of all occupations of either of the two parties, residing in the cities, ports and dominions of the other, shall have the privilege of remaining and continuing their trade and business therein, and shall be respected and maintained in the full and undisturbed enjoyment of their personal liberty and property, so long as they conduct themselves peaceably and properly and commit no offence against the laws. And, in case their acts should render them justly suspected, and having thus forfeited this privilege, the respective governments should think proper to order them to leave the country, the term of twelve months, from the publication or intimation of the order therefor, shall be allowed them, in which to arrange and settle their affairs and remove with their families, effects and property; to which end, the necessary safe conduct shall be given to them, which shall serve as a sufficient protection, until they arrive at the designated port and there embark; but this favor shall not be extended to those, who shall act contrary to the established laws. It is, nevertheless,

ARTICULO XXXII.

Si, lo que no es de esperar, llegase á haber en cualquier tiempo un rompimiento entre las dos naciones contratantes y se empeñaren en guerra una con otra, han convenido ahora para entonces, que los comerciantes, traficantes y otros ciudadanos de todas profesiones, de cualquiera de las partes que residen en las Ciudades, puertos y dominios de la otra, tendrán el privilegio de permanecer allí y de continuar su comercio y negocios y serán respetados y mantenidos en el pleno y tranquilo goce de su libertad personal y de su propiedad, en tanto que se conduzcan pacíficamente de un modo arreglado, y no cometan ofensa alguna contra las leyes. Y en caso de que su conducta los hiciere justamente sospechosos y habiendo perdido así este privilegio, los respectivos Gobiernos juzgaren oportuno mandarlos salir del país, se les concederá el término de doce meses, contados desde la publicación ó intimación de la orden, para que en él puedan arreglar y ordenar sus negocios y retirarse con sus familias, efectos y propiedades: á cuyo fin, se les dará el necesario salvo-conducto, que sirva de suficiente protección, hasta que lleguen al puerto designado, y en él se embarquen. Pero este favor no se estenderá á aquellos que obraren de un modo contrario á las leyes establecidas.

understood, that the respective governments may order the persons so suspected to remove, forthwith, to such places in the interior as may be designated.

ARTICLE XXXIII.

In the event of a war or of any interruption of friendly intercourse between the High Contracting Parties, the money, private debts, shares in the public funds, or in the public or private banks, or any other property whatever, belonging to the citizens of the one party in the territories of the other, shall in no case be sequestered, or confiscated.

ARTICLE XXXIV.

The High Contracting Parties desiring to avoid all inequality in their public communications and official intercourse, agree to grant to their Envoys, Ministers, Chargés d'Affaires and other Diplomatic Agents, the same favors, privileges, immunities and exemptions, that those of the most favored nations do or shall enjoy: it being understood that the favors, privileges, immunities and exemptions granted by the one party, to the Envoys, Ministers, Chargés d'Affaires or other Diplomatic Agents of the other party, or to those of any other Nation, shall be, reciprocally, granted and extended to those of both the

Debe no obstante entenderse, que á las personas así sospechosas, pueden los Gobiernos respectivos mandarlas retirar inmediatamente á lo interior, á aquellos lugares que tengan por conveniente designar.

ARTICULO XXXIII.

En el caso de una guerra ó de una interrupcion de la cordial inteligencia de las dos Altas Partes Contratantes, la propiedad en dinero, deudas entre particulares, acciones en los fondos públicos, ó en los bancos públicos ó privados, ó cualquiera otra propiedad perteneciente á los ciudadanos de una de las partes en el territorio de la otra, no podrá ser secuestrada ó confiscada en ningun caso.

ARTICULO XXXIV.

Deseando las dos partes contratantes evitar toda desigualdad con relacion á sus comunicaciones públicas, y á su correspondencia oficial, han convenido y convienen, en conceder á sus Enviados, Ministros, Encargados de Negócijs y otros Agentes públicos, los mismos favores, inmunidades y excenciones que hoi disfrutan ó en adelante disfrutaren los de la nacion mas favorecida; entendiendose, que cualesquiera favores, inmunidades ó privilejios que la República del Perú y los Estados Unidos de América tuvieren por conveniente conceder á los Enviados, Ministros, Encargados de Négocijs y

High Contracting Parties respectively.

Ajentes diplomaticos de cualquiera otra potencia, serán por el mismo acto estendidos y concedidos á los de las partes contratantes respectivamente.

ARTICLE XXXV.

To protect more effectually the Commerce and Navigation of their respective citizens, the United States of America and the Republic of Peru agree to admit and receive, mutually, Consuls and Vice Consuls, in all their ports open to foreign Commerce, who shall enjoy, within their respective Consular districts, all the rights, prerogatives, and immunities of the Consuls and Vice Consuls of the most favored Nation, but, to enjoy the rights, prerogatives and immunities which belong to them in virtue of their public character, the Consuls and Vice Consuls shall, before exercising their official functions, exhibit, to the government to which they are accredited, their Commissions or patents in due form; in order to receive their *exequatur*, after receiving which, they shall be acknowledged, in their official characters, by the authorities, magistrates and inhabitants of the district in which they reside. The High Contracting Parties, nevertheless, remain at liberty to except those ports and places, where the admission and residence of Consuls or Vice Consuls may not seem convenient,

ARTICULO XXXV.

A fin de hacer mas efectiva la proteccion que la República del Perú y los Estados Unidos de America concedieren en lo futuro al comercio y navegacion de sus respectivos ciudadanos, la República del Perú y los Estados Unidos de América convienen en recibir y admitir Consules y Vice-Consules en todos los puertos abiertos al comercio extranjero; los cuales disfrutará dentro de sus respectivos distritos consulares, todos los derechos, prerogativas é inmunidades de los Consules y Vice-Consules de la nacion mas favorecida. Pero para que los Consules y Vice-Consules de las dos partes contratantes puedan disfrutar de los derechos, prerogativas é inmunidades que les pertenecen por su caracter público, presentarán ántes de ejercer sus funciones, su nombramiento ó patente, en debida forma al Gobierno cerca del cual sean acreditados, á fin de obtener el *exequatur*; y recibido este serán tenidos y considerados como tales Consules ó Vice-Consules, por todas las autoridades, majistrados y habitantes del distrito consular donde residan. Queda sin embargo cada una de las partes contratantes en libertad de esceptuar aquellos

provided that the refusal to admit them shall likewise extend to those of all nations.

ARTICLE XXXVI

The Consuls, Vice Consuls, their officers and persons employed in their Consulates, shall be exempt from all public service and from all kinds of taxes, imposts and contributions, except those which they shall lawfully be held to pay on account of their property or commerce and to which the citizens and other inhabitants of the country in which they reside are subject, they being in other respects subject to the laws of the respective countries. The archives and papers of the Consulates shall be inviolably respected and no person, magistrate, or other public authority, shall, under any pretext, interfere with or seize them.

ARTICLE XXXVII.

The Consuls and Vice Consuls shall have power to require the assistance of the public authorities of the country in which they reside, for the arrest, detention and custody of deserters from the vessels of War or merchant vessels of their nation; and where the deserters claimed shall belong to a merchant vessel, the Consuls or

puertos y lugares en donde no se crea conveniente la admision y residencia de tales funcionarios, bien entendido que en tal caso la exclusion ó negativa á admitirlos deberá ser comun ó jeneral para todas las naciones.

ARTICULO XXXVI.

Los Consules, Vice-Consules, oficiales, y personas empleadas en sus Consulados estarán esentos de todo servicio público, y tambien de todo género de Contribuciones, pechos é impuestos, escepto aquellos que estuvieren obligados á pagar á causa de su comercio ó de sus propiedades, y á los que están sujetos los ciudadanos y otros habitantes del pais en que residen, estando ellos por lo demás sometidos á las leyes de los respectivos paises. Los archivos y papeles de los Consulados, serán inviolablemente respetados, y bajo de ningún pretexto se apoderará de ellos ó intervendrá en manera alguna con ellos, ningún majistrado, ni cualquiera otra persona.

ARTICULO XXXVII.

Los Cónsules y Vice-Consules, tendrán la facultad de requerir el auxilio de las autoridades del pais en que residan para el arresto, detencion y custodia de los desertores de los buques de guerra y mercantes de su nacion; y cuando los desertores reclamados pertenecan á un buque mercante, los Consules y Vice-Consules podrán diri-

Vice Consuls must address themselves to the competent authority and demand the deserters in writing, proving by the ship's roll, or other public document, that the individuals claimed are a part of the crew of the vessel from which it is alleged that they have deserted, but should the individuals claimed form a part of the crew of a vessel of War, the word of honor of a commissioned officer, attached to the said vessel, shall be sufficient to identify the deserters; and when the demand of the Consuls or Vice Consuls shall, in either case, be so proved, the delivery of the deserters shall not be refused. The said deserters when arrested shall be delivered to the Consuls or Vice Consuls, or at the request of these, shall be put in the public prisons and maintained at the expense of those who reclaim them, to be delivered to the vessels to which they belong or sent to others of the same nation; but if the said deserters should not be so delivered or sent within the term of two months, to be counted from the day of their arrest, they shall be set at liberty and shall not be again apprehended for the same cause. The High Contracting Parties agree, that it shall not be lawful for any public authority or other person, within their respective dominions to harbor or protect such deserters.

jirse ellos mismos á las autoridades competentes y pedir por escrito los susodichos desertores, manifestando el rol del buque ú otros documentos públicos para probar con ellos que los hombres pedidos forman parte de la tripulacion del buque de donde se alega que desertaron: pero si los individuos reclamados perteneciesen á la tripulacion de un buque de guerra, bastará la palabra de honor del Oficial con despacho¹ de dicho buque para identificar á los desertores y en cualquier caso que se pruebe por estos medios la reclamacion de los Consules ó Vice-Consules, no se rehusará la entrega de los desertores. Una vez arrestados los tales desertores, se tendrán á disposicion de los susodichos Consules, y pueden ponerse en las prisiones públicas á peticion y costo de aquellos que los reclaman para ser enviados á los buques á que pertenecen ó á otros de la misma nacion; pero si no fuesen así enviados dentro de los dos meses que deberán contarse desde el dia de su arresto, serán puestos en libertad y no volverán á ser arrestados por la misma causa. Las Altas Partes Contratantes convienen en que no podrá legalmente ninguna Autoridad pública ni otra persona cualquiera amparar ó potejer á tales desertores dentro de sus respectivos dominios.

¹ Regarding the words "Oficial con despacho", see the editorial notes.

ARTICLE XXXVIII.

For the purpose of more effectually protecting their commerce and navigation, the two contracting parties do hereby agree to form, as soon hereafter as may be mutually convenient, a consular convention, which shall declare specially the powers and immunities of the Consuls and Vice Consuls of the respective parties.

ARTICLE XXXIX.

Until the Conclusion of a Consular Convention, the High Contracting Parties agree that, in the absence of the legal heirs or representatives, the Consuls or Vice Consuls of either party shall be, *ex officio*, the Executors or Administrators of the citizens of their nation, who may die within their Consular jurisdictions, and of their countrymen dying at sea, whose property may be brought within their district. The said Consuls or Vice Consuls shall call in a Justice of the peace, or other local authority, to assist in taking an inventory of the effects and property left by the deceased, after which the said effects shall remain in the hands of the said Consuls, or Vice Consuls, who shall be authorised to sell, immediately, such of the effects, or property, as may be of a perishable nature, and to dispose of the remainder, according to the instructions of their respective Govern-

ARTICULO XXXVIII.

Con el objeto de proteger de un modo mas efectivo su comercio y navegacion, las dos partes contratantes convienen por la presente en formar, mas adelante, tan pronto como á ambas les convenga, una convencion consular en que se declaren especialmente las facultades é inmunidades de los Consules y Vice-Consules de las partes respectivas.

ARTICULO XXXIX.

Hasta que se concluya una convencion Consular, queda estipulado entre las Altas Partes Contratantes: que en ausencia de los herederos legales ó sus representantes, los Consules ó Vice-Consules de cualquiera de las partes, serán „*ex officio*” los albaceas ó administradores de los ciudadanos de su nacion que mueran dentro de sus distritos Consulares; y de aquellos que mueran en la mar, y cuya propiedad pueda ser llevada á algun Puerto ó lugar dentro de los mismos distritos. Los dichos Consules ó Vice-Consules podrán presentarse á un Juez de Paz, ó á cualquier otra autoridad local, y pedir que se haga el inventario de los efectos y propiedades que ha dejado el difunto, y despues de hecho, esos efectos quedarán en poder del Cónsul ó Vice-Consul, el que estará autorizado para vender inmediatamente áquellos efectos ó propiedades que puedan sufrir deterioro, y para disponer del

ments. And where the deceased has been engaged in Commerce, or other business, the Consuls or Vice Consuls shall hold the effects and property, so remaining, until the expiration of twelve calendar months; during which time the creditors, if any, of the deceased, shall have the right to present their claims or demands against the said effects and property, and all questions, arising out of such claims or demands, shall be decided by the laws of the country wherein the said citizens may have died. It is understood, nevertheless, that if no claim or demand shall have been made against the effects and property of an individual so deceased, the Consuls or Vice Consuls at the expiration of the twelve calendar months, may close the estate and dispose of the effects and property in accordance with the instructions from their own Governments.

ARTICLE XL.

The United States of America and the Republic of Peru, desiring to make as durable as circumstances will permit the relations established between the two parties, in virtue of this Treaty of Friendship, Commerce and Navigation, declare solemnly, and agree as follows:

1st. The present Treaty shall remain in force for the term of ten years, from the day of the exchange of the ratifications thereof,

resto segun las instrucciones de sus respectivos Gobiernos. Y cuando el difunto haya estado consagrado al comercio ó á otros negocios, los Consules ó Vice-Consules guardarán los efectos y propiedades que hayan quedado durante el plazo de doce meses, á fin de que si hay acreedores contra el difunto puedan presentar sus reclamaciones ó demandas contra los dichos bienes, y todas las cuestiones que se susciten por tales reclamaciones ó demandas se decidirá segun las leyes del pais en donde los dichos ciudadanos hayan fallecido. Se entiende, sin embargo, que si ninguna reclamacion ó demanda se ha hecho contra los bienes de un individuo que haya fallecido de esa manera, los Consules ó Vice-Consules, al fin del plazo de los doce meses podrán concluir la testamentaria y disponer de los bienes conforme á los instrucciones de sus propios Gobiernos.

ARTICULO XL.

La República del Perú y los Estados Unidos de América desean hacer tan durables como las circunstancias lo permitan las relaciones establecidas entre ambas Partes, en virtud de este Tratado de Amistad, Comercio y Navegacion: declaran solemnemente, y convienen en lo que sigue:

1^o El presente Tratado durará por el término de diez años, contados desde el dia del canje de las ratificaciones, y mas hasta el fin de

and further, until the end of one year after either of the High Contracting Parties shall have given notice to the other of its intention to terminate the same, each of them reserving to itself the right of giving such notice, to the other, at the end of the said term of ten years. And it is hereby agreed between the parties, that, on the expiration of one year after such notice shall have been received by either of them, from the other party as above mentioned, this Treaty shall altogether cease and determine.

2¹⁷ If any citizen or citizens, of either party, shall infringe any of the Articles of the Treaty, such citizen or citizens shall be held personally responsible therefor, and the harmony and good understanding between the two nations, shall not be interrupted thereby,—each party engaging in no way to protect the offender or offenders, or to sanction such violation under pain of rendering itself liable for the consequences thereof.

3¹⁷ Should, unfortunately, any of the provisions contained in the present Treaty be violated or infringed in any other manner whatever, it is expressly stipulated and agreed that neither of the contracting parties shall order or authorise any act of reprisals, nor declare or make war against the other, on complaint of injuries or damages resulting there-

un año despues que cualquiera de las dos Partes Contratantes haya notificado á la otra su intencion de cancelarlo, reservandose cada una el derecho de hacer esa notificacion á la otra, al fin de dicho plazo de diez años. Y se conviene además entre las partes que á la espiracion de un año despues que se haya recibido esa notificacion por una de ellas, hecha por la otra parte como se ha mencionado, este Tratado concluirá y terminará enteramente.

2º Si cualquier ciudadano ó cualesquier ciudadanos de una ú otra parte, quebrantasen cualquier artículo de este Tratado, dichos ciudadano ó ciudadanos serán responsables personalmente, y la armonía y buena intehjencia entre las dos Naciones no se interrumpirán por ese motivo; y cada parte se compromete á no proteger de ninguna manera al infractor ó infractores, ó á sancionar tal violacion, so pena de hacerse la misma responsable por las consecuencias de ella.

3º Si desgraciadamente las estipulaciones de este Tratado fuesen violadas de otra manera, se conviene expresamente en que ninguna de las Partes Contratantes ordenará ó autorizará ningún acto de represalia, ni declarará la guerra á la otra por quejas de agravios ó perjuicios que de allí resulten, hasta que la parte que se considere agraviada haya pre-

from, until the party considering itself aggrieved, shall first have presented to the other a statement or representation of such injuries or damages, verified by competent proofs and demanded redress and satisfaction, and the same shall have been either refused or unreasonably delayed.

4th Nothing contained in this Treaty shall, however be construed to operate contrary to former and existing public treaties with other Nations or Sovereigns.

The present Treaty of Friendship, Commerce and Navigation shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by the President of the Republic of Peru, with the authorisation of the Congress thereof, and the ratifications shall be exchanged, at Washington, within eighteen months from the date of the signature hereof, or sooner if possible.

In faith whereof, we the Plenipotentiaries of the United States of America and of the Republic of Peru have signed and sealed these presents.

Done at the city of Lima on the twenty sixth day of July, in the year of Our Lord one thousand eight hundred and fifty one.

[Seal] J RANDOLPH CLAY

[Seal] J. CMO TORRICO

sentado primeramente á la otra una relacion ó representacion de tales agravios ó perjuicios, apoyados en suficientes pruebas, y haya pedido reparacion y satisfaccion y que esta se le haya rehusado o retardado sin razon.

4º Nada de lo contenido en este Tratado se entenderá de manera que pueda producir un efecto contrario á los tratados anteriores y vijentes celebrados con otras Naciones ó Soberanos.

El presente Tratado de Amistad, Comercio y Navegacion será aprobado y ratificado por el Presidente de la República del Perú con la autorizacion del Congreso del Perú y por el Presidente de los Estados Unidos de América, con el parecer y acuerdo del Senado de los Estados Unidos; y las ratificaciones serán canjeadas en Washington á los diez y ocho meses de esta fecha ó ántes sí es posible.

En fé de lo cual los Plenipotenciarios de la República del Perú y de los Estados Unidos de América hemos firmado y Sellado el presente. Hecho en Lima el veintiseis de Julio del año del Señor de mil ochocientos y cincuenta y uno.

[Seal] J. CMO TORRICO

[Seal] J RANDOLPH CLAY

NOTES

The signed original of this treaty which is in the treaty file has the English version written on the left pages and the Spanish on the right. Among the other papers in the file are the attested resolution of the Senate of June 23, 1852; the duplicate United States instrument of ratification of July 16, 1852; the certificate of the exchange of ratifications of the same date, which is written in English; and the original proclamation of July 19, 1852. The Peruvian instrument of ratification, dated December 1, 1851, which is written in Spanish, includes the text of the treaty in Spanish only.

Also in the treaty file is the original full power, dated July 16, 1852, given to William Hunter, then Chief Clerk of the Department of State and Acting Secretary of State, to exchange the ratifications.

Accompanying the treaty when it was submitted to the Senate was a copy of the despatch of John Randolph Clay, Chargé d'Affaires at Lima, dated December 6, 1851 (Executive Journal, VIII, 366); that despatch is cited and quoted in part below.

THE FULL POWERS

The preamble of the treaty contains the usual statements regarding the respective full powers; that given to the Peruvian Plenipotentiary, Brigadier General Juan Crisostomo Torrico, Minister of War and Marine and Minister of Foreign Affairs *ad interim*, is not available; it was dated June 23, 1851 (D.S., 8 Despatches, Peru, No. 72, July 8, 1851, and enclosure, translation of a note of June 23, 1851); the full power given to John Randolph Clay by President Fillmore was in customary form and dated January 6, 1851 (D.S., 3 Credences, 385).

A TEXTUAL CORRECTION

In Article 37 of the treaty as signed, there was written in the Spanish version "bastará la palabra de honor del Comandante de dicho buque" as the equivalent of the phrase in the English "the word of honor of a commissioned officer, attached to the said vessel, shall be sufficient"; obviously the word "Comandante" should not have been used in the Spanish.

This slip was not noticed until after the signed original for the United States had left Lima; and Clay then "agreed, with General Torrico, to annex a declaration to the Treaty explaining and correcting the error" (D.S., 8 Despatches, Peru, No. 78, September 8, 1851). The declaration was accordingly signed (seemingly later, although dated August 11, 1851) and was transmitted with Clay's despatch of the following December 6 (D.S., 9 Despatches, Peru, No. 84); the declaration was before the Senate (Senate Confidential Document No. 4, 32d Congress, 1st session, Regular Confidential Documents, XXIX, 119-47). Its text follows in the two languages (collated here with that one of the two originals in the treaty file which has the English on the left pages):

Declaration.

The words—"Comandante del dicho buque"—having been erroneously employed, in the Spanish version of Article XXXVII of the Treaty of Friendship, Commerce and Navigation, between the United States of America and the Republic of Perú, signed in this Capital on the 26th of July 1851: to express the words—"commissioned Officer of the said Vessel"—employed in the English text of the said Article XXXVII: and whereas the proper signification of the words—"commissioned Officer"—is, in the Spanish language, "Oficial con despacho"—and not—"comandante"; the Undersigned, Plenipotentiaries of the two Nations, declare and agree that the words—"Oficial con despacho"—be and hereby are substituted, instead of the word—"comandante"; and that they shall have the same force and value, as if they had been used, originally, in the said Article. XXXVII. In faith whereof, We the Undersigned, by virtue of our respective full Powers, have signed the present Declaration and affixed thereto our Seals, at Lima this Eleventh day of August, in the year of Our Lord, one thousand Eight hundred and Fifty One.

[Seal] J RANDOLPH CLAY.

[Seal] J. CMO TORRICO

Declaracion.

Las palabras—"Comandante del dicho buque" habiendo sido empleadas por equivocacion en la version española del Artículo XXXVII. del Tratado de Amistad, Comercio y Navegacion entre la República del Perú y los Estados Unidos de América, firmado en esta Capital el 26. de Julio de 1.851., para expresar las palabras—"Commissioned officer of the said vessel"—empleadas en el texto ingles del dicho Artículo XXXVII y en atencion á que el verdadero significado de las palabras—"Commissioned officer"—es en español "Oficial con despacho" y no "Comandante"; los infrascritos Plenipotenciarios de las dos Naciones declaran y convienen que las palabras "Oficial con despacho", deben ser y son sustituidas en lugar de la palabra "Comandante" y que ellas tendrán el mismo valor y efecto que si hubiesen sido originariamente usadas en el referido Artículo XXXVII. En fé de lo cual hemos firmado la presente declaracion en virtud de nuestros plenos poderes, selladola con nuestros respectivos sellos. En Lima al dia once de Agosto del año del Señor Mil ochocientos cincuenta y uno.

[Seal] J. CMO TORRICO

[Seal] J RANDOLPH CLAY.

Accordingly, in the text following the headnote, the Spanish version is printed as corrected by the declaration; and it will be seen that the correction did not go quite far enough; the Spanish should read "de un Oficial", etc., instead of "del Oficial".

The print of the Spanish version in 10 Statutes at Large, 926-48, does not take account of the correction.

THE NEGOTIATIONS

The Treaty of Peace, Friendship, Commerce, and Navigation of November 30, 1836, between the United States and the Peru-Bolivian Confederation (Document 82), duly went into force on May 28, 1838; the Peru-Bolivian Confederation was short lived, not enduring beyond January 1839; and the treaty mentioned (by Article 30) was subject to termination, "in all points relating to commerce and navigation", upon one year's notice given by either contracting party on or after May 28, 1850. In 1847 the validity of the treaty of 1836 was denied by the Government of Peru (see the notes to Document 82); and on February 9, 1848, a treaty between the United States and Peru was signed at Washington by the Secretary of State, James Buchanan, and the Peruvian Minister, Joaquín José de Osma (D.S., Unperfected B3). That treaty of 1848, of thirty-one articles, was

in many respects similar to the treaty of 1836, although with much of the wording recast; but there were material changes from the earlier treaty; notably different were the clauses which replaced Articles 3 and 4 of the treaty of 1836; these were Articles 3 to 8, inclusive, of the treaty of 1848, reading as follows in the English version (collated with the original; the treaty of 1848, with other papers, is printed in Senate Confidential Document No. 17, 31st Congress, 1st session, Regular Confidential Documents, XXIII, 989-1049):

ARTICLE III.

The citizens of both countries may frequent all the coasts and ports of the other where commerce may be allowed, may reside and trade there in all kinds of produce, manufactures and merchandize not prohibited, and shall enjoy the same exemptions and privileges as native citizens, submitting themselves to the established laws, decrees and usages to which said native citizens are subjected. This article does not include the coasting trade, which both parties reserve to themselves respectively, and which will be regulated according to their separate laws.

ARTICLE IV.

Vessels of the United States which may arrive in Peru proceeding from a port of the United States, shall not pay, either on entering or clearing, other or higher duties of tonnage or on the cargo which they may carry, whatever may be its class, or origin, than those which national vessels may pay in the like case. And reciprocally, Peruvian vessels which may arrive in the United States proceeding from a port of Peru, shall not pay, either on entering or clearing, other or higher duties of tonnage or on the cargo which they may carry, whatever may be its class or origin, than those which national vessels may pay in the like case.

ARTICLE V.

For the better understanding of the preceding article, and taking into consideration the actual state of the commercial marine of Peru, it has been stipulated and agreed, that all vessels belonging exclusively to a citizen or citizens of said Republic, and whose captain is also a citizen of the same, though the construction or the crew are, or may be foreign, shall be considered, for all the objects of this treaty, as a Peruvian vessel.

ARTICLE VI.

No higher or other duties shall be imposed on the importation into the United States of any article the produce or manufacture of Peru, and no higher or other duties shall be imposed on the importation into Peru of any article, the produce or manufacture of the United States, than are or shall be payable on like articles, being the produce or manufacture of any other foreign country, nor shall any higher or other duties or charges be imposed in either of the two countries on the exportation of any article to the United States or to Peru, respectively, than such as shall be payable on the exportation of like articles to any other foreign country; nor shall any prohibition be imposed on the importation or exportation into the territories or from the territories of both parties, of any articles the produce or manufacture of either, unless such prohibition shall equally extend to all nations.

ARTICLE VII.

Merchants, captains of vessels, and in general all citizens of both countries, shall be allowed to manage, themselves, their own business in the ports and places subject to the jurisdiction of the other, and shall have full liberty to consign and sell their merchandize, purchase returns, and unload, load and send off their vessels; they being in all these cases to be treated as citizens of the most favored nation. They shall be subject, however, to the general taxes or contributions established by law.

ARTICLE VIII.

The citizens of neither of the contracting parties shall be liable to be detained nor shall their vessels or merchandize be embargoed in the ports of the other for any military expedition, nor shall said citizens be compelled to perform any service of any kind whatever.

The treaty of 1848, with the advice and consent of the Senate (Executive Journal, VII, 480-81, August 12, 1848), was ratified by the United States on September 7, 1848; and the instrument of ratification was sent to Lima for the exchange (D.S., 15 Instructions, Peru, 62-63, September 7, 1848, signed by Isaac Toucey, then Attorney General, as Acting Secretary of State); but the treaty of 1848 failed to go into force because of its rejection by the Peruvian Congress on November 16, 1849, for reasons stated in Clay's despatch of February 12, 1850 (D.S., 8 Despatches, Peru, No. 38; and see the enclosures to that despatch). Anticipating the renewal of negotiations at Washington, Clay, in the despatch last cited, reviewed the articles of the treaty of 1848, with these recommendations:

It may be permitted for me to suggest to you, Sir, that I do not think that the Government can consent to make in a new Convention any changes, or modifications, which would lessen the advantages secured to the commerce of the United States, by the Treaty of the 9th of February 1848. Perfect equality and reciprocity have always been the object of our treaties with foreign nations, and Peru should not pretend to form an exception to our general policy.

Examining the Articles of the before-mentioned Treaty in detail: it would be well, *in a new one*, to make a *Separate Article* of that portion of the *Third*¹ which relates to the *Coasting Trade*, so as to enlighten any members of a future Peruvian Congress who might, like their predecessors, suppose that the treaty admitted the United States to share in it.

The stipulation, in Article IV,² placing vessels of the United States upon the same footing as Peruvian, was also violently opposed in the Congress. But this Article, relating as it does to duties of tonnage should not, it appears to me, be changed, or modified, in substance, for Peruvian vessels pay only six and a quarter cents per ton, whereas Articles 102, 103 and 104 of the Commercial Regulations direct as follows:

ART. 102.

"All foreign vessels proceeding from foreign Ports that land all or part
 "of their cargoes in any Port of the Republic will pay in the first Port where
 "they commence landing, five dollars anchorage duty and clearing port,
 "and the sum of five dollars for duties to Captain of the Port, roll and
 "health. She will likewise pay a quarter of a dollar for every ton she meas-
 "ures according to her register: and if afterwards she proceeds to another
 "of the Ports of entry to continue discharging or to load cargo, she will pay
 "in each one of said Ports the ten dollars abovementioned and not the
 "tonnage duty."

ART. 103.

"All foreign vessels the moment they anchor in any port of the Republic
 "become indebted for ten dollars which comprehend anchorage, clearing
 "port, Captain of the Port, roll and health, and the can load or unload
 "precious metals only, without paying tonnage duty."

¹ For the wording of Article 3, see above.

² For the wording of Article 4, see above.

ART. 104.

"Vessels employed in the Whale and Seal fishery are free of the tonnage duty, provided they do not land more than the value of \$200, which is considered necessary for their refreshment: but if they exceed this sum, they are subject to pay the duties beforementioned."

The tonnage duties are heavy upon the merchant vessels of the United States; as those coming to Peru measure three, four, six and sometimes seven hundred tons. It is of some moment therefore, that they should be placed upon an equality with Peruvian vessels in the Article of a new Treaty relating thereto, and it might also include the port dues of ten dollars; though this is of minor importance.

The objection heretofore brought forward by this Government, against admitting foreign vessels into Peruvian ports upon the same terms as national ones, in respect to tonnage duties, is, that there would be no real reciprocity; because no vessels are built within the Republic, owing to the want of wood and other materials, and because few Peruvian vessels ever double Cape Horn and, therefore, they could derive no benefit from stipulations equalizing those duties. This objection referred to the ships of the United States and of Europe, and if applied to the latter may still be plausible; but it has lost its force with regard to the former, since the United States is willing to concede to Peru the important privilege, contained in Article V of the Treaty of February 9th 1848; which provides—"that all vessels belonging exclusively to a citizen or citizens of that Republic and whose captain is also a citizen of the same, though the construction and the crew are or may be foreign," should be considered "as a Peruvian vessel:" thus enabling Peruvian citizens to purchase and nationalize foreign vessels and form a commercial marine which could not be constructed in the country. And, since the cession of Upper California, has opened a new sphere to Peruvian Navigation; for *now* the vessels under the flag of that Republic which enter the port of San Francisco must be equal in number to the merchantmen of the United States which come to Callao. Article V¹ would doubtless be inserted in any future Convention with Peru.

The stipulations of Article VI² are the same as those employed in the greater number of our treaties, but, in my opinion, a change in them is necessary in negotiating a new treaty with Peru, because the reciprocity seemingly secured to the Commerce of the United States, by the terms of the Article, does not in reality exist. This is shewn by a reference to the Eighty third Article of the Commercial Regulations.

ARTICLE 83.

"All goods and produce coming direct from Europe, Asia and North America, or by the Isthmus of Panama, to the Ports of Entry of Peru, in foreign vessels and consigned to foreigners, will pay of the total amount of Import duties, belonging to the state, ten per cent in documents of reform, or of the foreign debt, or public credit and the remainder in money. If said goods and produce should come direct in foreign vessels and consigned to citizens of Peru, or in national vessels consigned to foreigners, they will pay twenty per cent in the above-mentioned documents and the remainder in money: and if they come in National Vessels and consigned to citizens of the Republic, thirty per cent in documents and the remainder in money. The merchandise belonging to the Asiatic Company is excepted from the privileges of this Article."

The public funds mentioned in the preceding article are at a discount varying from forty to eighty per cent, and the privilege of paying a certain amount of the Import duties, in the depreciated paper, was given with the double view of encouraging the trade with distant countries, particularly in Peruvian bottoms; and to reduce the amount of the national debt. Now, although, strictly speaking, the produce or manufactures of the United States cannot be said to pay—"higher or other duties", under the Eighty third Article of the Commercial

¹ For the wording of Article 5, see above.

² For the wording of Article 6, see above.

Regulations; still, as there is a bonus of ten and twenty per cent in favor of the citizens of Peru, in the payment of the duties, depending upon the manner in which the merchandise is imported, its operation would be essentially injurious to the Navigation of the United States were the Peruvians enterprising, and especially if California be comprised in the words "North America". But as the Commercial Regulations were enacted before the acquisition of Upper California by the United States, and the words, North America, ("Norte America") in Peruvian phraseology mean the Union as it existed before the War with Mexico, this Government considers that California is not included in the provisions of the Eighty third Article. The subject therefore merits consideration.

The stipulations in all the Articles, of the Treaty of the 9th of February 1848, from the Seventh to the Twenty Sixth, inclusive, should in my opinion be retained.¹

The Twenty Seventh Article² might be modified so as to secure to the Diplomatic Agents of the United States, the same favors, prerogatives and immunities, in Peru, as Peruvian Diplomatic Agents enjoy in the United States. It is the usage in the United States to admit articles, destined for the use of foreign Representatives and their families, free of duty, and it is therefore proper that our Agents should have the same courtesy extended to them in Peru. This is now the case, but as the change was made upon my representations, the favor may be taken away at a future time.

There is no apparent necessity to re-model the remaining Articles³ of the above-mentioned Treaty. Stress might, however, be laid upon the provisions in Article XXX, as there is a great aversion, in Peru, to deliver up deserters from foreign vessels and the authorities are inclined to screen them.

By the laws of Peru, no foreigners can leave the Republic without a Passport, upon stamped paper of the value of twelve dollars. Even passengers going from Panama to Valparaiso, who only change the steamers at Callao and remain four or five days, are obliged to take out a passport, unless their names are entered at Panama for the whole voyage. Passports are vexatious in all countries: they are unnecessary and odious in a Republic, and our citizens should be protected by treaty, from such exactions. I have conversed with Mr Tirado upon the subject and he confessed that they should be abolished.

I submit these suggestions to you with great deference, and trust they may be found useful in case negotiations are renewed with Peru.

Following the failure of the treaty of 1848, negotiations for a new treaty went on at Washington soon after the arrival there as Peruvian Minister of José Manuel Tirado, who presented his credentials on May 10, 1850; these resulted in a treaty signed on July 13, 1850, by Secretary of State Clayton and the Peruvian Plenipotentiary (D.S., Unperfected C3). Notwithstanding the suggestions made by Clay in his quoted despatch of the previous February 12, that treaty of 1850, of thirty-two articles, was not much more than a copy of the treaty of 1836 (Document 82); every clause of the treaty of 1836, except the second paragraph of Article 9, was carried almost verbatim into the treaty of 1850; the latter had, however, some new provisions; one of these, Article 4, was the same as Article 5 of the treaty of 1848 (quoted above); a paragraph was added to Article 3, reserving the right to either party to establish discriminating duties, etc., in reciprocity with third states; a sentence was added to Article 27 (Article 25 of the treaty of 1836) which reads thus in the English:

¹ For the wording of Articles 7 and 8, see above; Articles 9 to 26 of the treaty of 1848 are substantially to the same effect as Articles 5 to 23 of Document 82.

² Very much the same as Article 24 of Document 82.

³ Articles 28 to 31, with stipulations quite similar to those of Articles 25, 26, 27, 28, and 30 of Document 82.

“The Consuls and Vice-Consuls shall not be allowed the use of flags, nor be permitted to assume the right of asylum at their residences, being only authorized to designate their respective houses or places of business by a shield with the arms of the nation they respectively represent”; and finally there was this Article 6 (English version), put forward by Clayton, an article which he “considered indispensable to insert” in the treaty (D.S., 1 Notes to the Peruvian Legation, 29, July 12, 1850; see Nichols, “Latin American Guano Diplomacy”, in *Modern Hispanic America*, 517-43; in House Report No. 347, 33d Congress, 1st session, serial 744, are printed the English version of the treaty of 1850 and the report of the Secretary of State on the negotiations, dated July 11, 1850):

The two contracting parties being desirous to consolidate the friendship now happily subsisting between them by affording mutual protection to their respective interests and industry, it is declared from this time that in the event the Republic of Peru should think proper to decree that the exportation of Peruvian guano to foreign countries shall be effected by disposing of said guano in Peruvian ports or places to such vessels or citizens of foreign nations as may come there in search of it, by paying a certain price or duty upon the quantity taken away, in such case, the aforesaid Republic of Peru shall not exact from citizens or vessels of the United States that may go there in search of guano, in competition with those of other nations, a higher price or higher duties than what they may exact from the vessels and citizens of the most favored nation.

The treaty of 1850 and the papers accompanying it when submitted to the Senate, are printed in Senate Confidential Document No. 17, 31st Congress, 1st session, Regular Confidential Documents, XXIII, 989-1049. The full power¹ to Clayton was issued on July 13 (D.S., 3 Credences, 368); on the same day the treaty was signed at four o'clock in the afternoon (D.S., 1 Notes to the Peruvian Legation, 29, July 12, 1850); earlier on that day the funeral of President Taylor, who had died in the evening of July 9, took place; President Fillmore had taken the oath of office on July 10, at noon (see Richardson, V, 52-56).

Following the advice and consent of the Senate (Executive Journal, VIII, 246, September 24, 1850), the treaty of 1850 was duly ratified by the United States under date of November 14, 1850, and the instrument of ratification was transmitted to Clay at Lima for the exchange (D.S., 15 Instructions, Peru, 75-77, January 4, 1851); but Clay had already informed this Government that Article 6 of the treaty of 1850 was strongly objected to by the Government of Peru; the Peruvian Executive, General Ramón Castilla, was “inflexible and determined to exclude the subject [of guano] entirely from the treaty” and was “much excited against M^r Tirado, for consenting to insert an article upon Huano which was not mentioned in his instructions” (D.S., 8 Despatches, Peru, No. 55, October 5, 1850; and see the enclosures to that despatch); that objection was maintained by the succeeding administration under General José Rufino Echenique as President, who “would willingly have ratified the treaty concluded by M^r

¹ The original of this full power is in the Library of Congress, 9 Clayton Papers, 1764.

Clayton with M^r Tirado, were it not that the Government had resolved not to permit the article of Huano to form a subject of negotiation in any treaty concluded with a foreign power: that Huano was the property of the nation and he did not think it expedient to make any stipulation that might embarrass its sale or exportation: that, therefore, he must decline presenting the treaty to the Congress. Besides, he was convinced that the Chambers would never sanction the insertion of an Article in relation to Huano" (*ibid.*, No. 70, June 7, 1851; and see the enclosures to that despatch); so the treaty of 1850 was not submitted to the Peruvian Congress and failed to go into force.

In his despatch of February 12, 1850, quoted in part above, Clay had made various suggestions regarding the terms of a new treaty, in view of the failure of the treaty of 1848; and when he learned of the objections to the treaty of 1850, he returned to the subject even more fully in his despatch of October 5, 1850 (*ibid.*, No. 55), from which these paragraphs are excerpted; the article numbers therein mentioned are those of the treaty of 1850; footnotes refer to the corresponding articles of the treaty of 1836 (Document 82):

Article Third ¹ places the citizens of both countries on an equality with those of the most favored nation. They are to enjoy the same liberty of trading with the ports of each and are not to pay other or higher duties, charges or fees, either on their vessels or cargoes than the most favored nation: the coasting trade is excepted and they reserve the right of establishing discriminating duties, exemptions and privileges upon particular foreign articles with a view of obtaining similar concessions upon particular articles of their own production.

The terms of this Article are general and, consequently, somewhat vague. No special mention is made of tonnage duties and, although the words—"duties, charges or fees"—are doubtless intended to include them, a question might arise as to their meaning, which is to be avoided. Besides, national vessels only pay six and a fourth cents per ton in Peruvian Ports, whereas foreign vessels are charged twenty five cents per ton. To avoid this inequality, the treaty between Great Britain and Peru, signed in London on the 10th of April last,² stipulates that British vessels measuring two hundred tons, and upwards, are to pay the same tonnage duties, in the ports of Peru, as national vessels; if they measure less than two hundred tons, they continue to pay the higher rate of twenty five cents per ton. This is tantamount to placing British vessels upon an equality with Peruvian, as few, if any, of the former, engaged in trade with the Republic, are of less burthen than two hundred tons. The Convention with Great Britain will probably be ratified by the next Congress of Peru and there is no reason that the treaty with the United States should not contain a similar provision.

I would also propose to insert an Article exempting *Steamers* from the payment of all tonnage duties, whatever may be their measurement. It is well known that the machinery and coal, with other arrangements on board, occupy so much room that a Steamship registering a thousand, or twelve hundred tons, will not carry over three hundred and fifty, or four hundred, tons of cargo; whilst the real burthen of sailing vessels of the same class is not unfrequently one third and even one half more than their registered tonnage. It is not just, therefore, that steamers should be charged with tonnage duties in the same ratio as other vessels; as those duties should be levied according to the capacity of the vessel to carry cargo, rather than upon tonnage entered in her register. This distinction is important; and it might be wise to abolish tonnage duties altogether, with respect to those nations who shall agree to place the navigation of the United

¹ Article 3 of the treaty of 1850 is the same as Article 3 of Document 82, except for an added paragraph regarding discriminating duties of which the despatch here gives a fair summary.

² Text in British and Foreign State Papers, XXXVIII, 20-32.

States upon the same footing; and to retain them only as a means of inducing powers with whom we have no treaties, or whose regulations are onerous, to adopt a more liberal policy.

Article third also reserves the right in either of the parties to establish discriminating duties, exemptions and privileges upon particular articles the manufacture and produce of other foreign countries, to obtain the same terms from them for particular articles of national manufacture or produce. This clause is, in some sort, an exception to the general principle of reciprocity pervading the treaty; but the effect of it, seemingly, might be counteracted at any moment. For, as the discriminating duties, exemptions and privileges would be granted for some consideration, given by the foreign nation, the other party to the treaty, if it wished to participate in them, could revert to the provisions of Article Second and, upon offering a like consideration, claim the same concession: since all favors in commerce and navigation shall, "immediately", be enjoyed "on allowing the same compensation if the concession was conditional."

I think, therefore, that the third Article should be remodelled and the substance of it divided into several distinct Articles, somewhat in the following manner.

ARTICLE III.

The two high Contracting Parties being likewise desirous of placing the commerce and navigation of their respective countries upon the basis of entire and perfect reciprocity, mutually agree that the citizens of each Republic may frequent with their vessels all the ports and places of the other wherever foreign commerce is permitted and may reside in all parts whatsoever of said territories and trade there, according to the rules established by their respective regulations of commerce, in all kinds of produce, manufactures and merchandise not prohibited to all, and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing.

ARTICLE IV.

Vessels of the United States, measuring two hundred tons and upwards, of register, which may arrive, either laden or in ballast, in the ports of Peru, proceeding from a port of the United States, shall not pay, either on entering or clearing, other or higher duties of tonnage, port charges, or fees and perquisites of public officers than those which national vessels may pay upon entering and clearing: and, reciprocally Peruvian vessels, measuring two hundred tons and upwards, of register, which may arrive, either laden or in ballast, in the ports of the United States, proceeding from a port of Peru, shall not pay, either on entering or clearing, other or higher duties of tonnage, port charges, or fees and perquisites of public officers than those which national vessels may pay upon entering and clearing. But it is expressly understood that vessels of either nation, measuring less than two hundred tons, of register, shall be subject to and pay the tonnage duties, port charges, fees and perquisites of public officers, established by the commercial regulations of the respective countries.

ARTICLE V.

With a view to the encouragement and extension of steam navigation, the two high contracting parties have, mutually, agreed, that the Steamers, or vessels propelled by steam, of whatever tonnage they may be, belonging to their citizens, may, reciprocally, enter and clear from the ports of both the contracting parties, without paying any duties of tonnage whatever: it being the intention of the parties that the said steamers, or vessels propelled by steam, shall be exempt from all duties of tonnage paid by other vessels.

ARTICLE VI.

All kinds of merchandise and articles of commerce which may be lawfully imported into the ports of Peru, in Peruvian vessels, may, also, be so imported

in vessels of the United States, without paying other, or higher duties, or charges of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever than if the same merchandise or articles of commerce had been imported in Peruvian vessels and for account of, or consigned to Peruvian citizens. And, reciprocally, all kinds of merchandise and articles of commerce which may be lawfully imported into the ports of the United States, in vessels of the United States, may also be so imported in Peruvian vessels, without paying other or higher duties or charges of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever, than if the same merchandise and articles of commerce had been imported in vessels of the United States and for account of, or consigned to citizens of the said States.

It is understood that the stipulations in this Article are, to their full extent, applicable to vessels of the United States and their cargoes arriving in the ports of Peru, and, reciprocally, to Peruvian vessels and their cargoes arriving in the ports of the United States.

ARTICLE VII.

All kinds of merchandise, articles of commerce and articles the product or manufacture of the United States, which may be, lawfully, exported from the United States, in national or foreign vessels, may also be exported therefrom in Peruvian vessels, without paying other or higher duties, or charges, of any kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever, than are or may be payable upon the like articles when exported in national vessels, or vessels of the most favored nation: and reciprocally, all kinds of merchandise, articles of commerce and articles the product or manufacture of Peru, which may be, lawfully, exported from Peru, in national or foreign vessels, may also be exported therefrom in vessels of the United States, without paying other or higher duties, or charges of any kind or denomination, levied in the name, or to the profit of the Government, the local authorities, or of any private establishment whatsoever, than are or may be payable upon the like articles when exported in national vessels, or vessels of the most favored nation.

The provisions inserted in Article VI, which I have the honor to propose, are necessary to place the commerce of the two countries upon an equality, because, by the Eighty third article of the Commercial Regulations of Peru, there is a bonus of ten and twenty per cent, in favor of Peruvian citizens, in the payment of import duties, upon merchandise brought round Cape Horn, or by the Isthmus of Panama, depending upon the character of the vessels in which such goods are imported and whether they are consigned to natives or foreigners. (See Despatch No 38. to the Secretary of State [quoted in part above].)

Article Fifth¹ of the Treaty of the 13th of July [1850], contains the following:—
 “The citizens of neither of the Contracting Parties shall be liable to any embargo; nor to be detained with their vessels, cargoes merchandise and effects for any military expedition, nor for any public or private purpose whatever without being allowed therefor a sufficient indemnification.”

That there may happen a crisis in the affairs of a State—one upon which the very existence of the Government may depend—in which it would be authorised, under the law of nations, to make use of the vessels or property of foreign citizens, to provide for the public safety, upon paying a proper indemnification for the same, is unquestionable. But it scarcely can be admitted that the vessels or the merchandise of foreign citizens can, under any circumstances, be taken for a *private* purpose, without the consent of the owners, although an indemnification be offered for it; because it is only the supreme necessity of the moment which authorises the appropriation of the property for the public weal. Moreover, in those cases where the Government may be justified in using the property of foreign citizens, for its own purposes, the compensation should always be paid in advance,

¹ Like Article 4 of Document 82.

since it is well known that there are but few instances, in which an indemnification granted by a South American Government, to the parties who suffered by its acts, has been equal to the loss sustained by them and where it was obtained without great difficulties and delays. I would, therefore, propose to change the phraseology of the Article so as to read thus. "The citizens of neither of the Contracting Parties shall be liable to any embargo, nor to be detained with their vessels, cargoes, merchandise and effects for any military expedition, nor for any public purpose whatever, without being allowed therefor a full and sufficient indemnification, which shall in all cases be paid in advance. Neither shall they be called upon for any forced loan or occasional contributions, nor be subject to military service by land or sea."

Article twenty Seventh ¹ is the next which, it appears to me, should be modified. The last sentence of it is, as follows: "The Consuls and Vice Consuls shall not be allowed the use of flags, nor be permitted to assume the right of asylum at their residences, being only authorised to designate their respective houses or places of business by a shield with the arms of the nation they respectively represent."

This stipulation is not to be found in any treaty hitherto negotiated by the United States, with a foreign power; for although the Second Article of the Convention with France, of the 14th of November 1788 [Document 15], provides that Consuls "shall place over the outward door of their house the arms of their Sovereign", yet it does not expressly prohibit them the use of Flags. I am aware that in most Capitals of European Nations, neither Diplomatic Agents, nor Consuls use flags, and they are unnecessary in countries whose Governments are not continually exposed to revolutions and where the people are sufficiently enlightened to understand, that foreigners have certain rights and foreign Consuls certain privileges and that their houses are entitled to a certain respect. But in these South American Republics, the people, at large, know no difference between one foreigner and another—they dislike them all—and the ignorant Indians, inhabiting the interior and the coast, removed from the Capital, have probably, never heard of a Consul and, in popular tumults, the shield with the arms of any nation might be overlooked, or mistaken, by them, for a business sign, whereas the flag is visible and commands respect as soon as it is unfurled.

The flag does not confer other or greater rights than the shield and the violation of the residence of a Consul bearing either would be an offence of equal gravity. Neither gives to Consuls the right of asylum and, I believe, they have never claimed it upon this coast. The flag, however, possesses this advantage over the shield, that during political troubles and revolutions, it marks more distinctly the Consular residence and affords greater protection to the citizens of the country it represents. Lastly, as the Consuls of all other nations are permitted the use of flags, in Peru, those of the United States may justly claim the same privilege.

The thirtieth Article ² of the treaty might be so modified as to dispense with the exhibition of the ships roll in cases of desertion from vessels of War and the word of a commissioned officer attached to the vessel should be sufficient, in such cases, to identify and cause the arrest of the deserter, without making a formal demand in writing. This would save great trouble and delay in countries where the course of justice is slow and uncertain.

An article should be added to the Treaty by which the Peruvian Government should consent to abolish passports. Both New Granada and Chile have done so, and in a Republic they are useless, vexatious and odious.

I have deemed it my duty to offer to the Department the preceding remarks upon the treaty recently signed at Washington, and trust they may be of some use in the premises. I beg leave, in conclusion, to repeat the opinion that treaties of Commerce and Navigation, with Peru, should be negotiated in Lima, rather than in Washington, because this Government is continually altering its commercial regulations and a great change has taken place, in the importance and frequency of its relations with the United States, since the annexation of California. Other and greater interests will doubtless arise in future, which an Agent, on the spot, can probably mark and protect easier than can be done from

¹ Cf. Article 25 of Document 82.

² Like Article 28 of Document 82.

a distant point where higher and more urgent affairs demand the attention of the negotiators.

I believe that the Peruvian Government would *now* prefer that the treaty should be negotiated in Lima, as a friend and confidential adviser of the President has told me that if full powers were sent to me to negotiate a Convention, he knew that a satisfactory one could be concluded.

In the instruction which acknowledged Clay's despatch No. 55, the ratification of the United States of the treaty of 1850 was enclosed, and hope for the completion of that treaty was expressed; but there were these alternative directions from Secretary of State Webster (D.S., 15 Instructions, Peru, 75-77, January 4, 1851):

If, however, the Peruvian President should decline laying the instrument [of 1850] before their Congress or if it should fail to meet the approbation of that body, considerations of dignity and propriety will forbid any further attempt for the present at negotiating at Washington another treaty with Peru, the one concluded by Mr. Buchanan with Osma having also been rejected by the Congress of that Republic after it had been approved by the Senate and ratified by the President of the United States. As it is desirable, however, especially in view of the increasing intercourse between Peru and California, that the commercial relations between the United States and that country should be regulated by a treaty of some description, the President has thought proper to authorize you in the contingency adverted to to negotiate a new one at Lima, for which you will herewith receive a Full Power. It is to be hoped that you may be able to induce the negotiator on their part to agree to the modifications of the one concluded by Mr. Clayton and Mr. Tirado, which, in your despatches Nos. 38 and 55, you point out as being desirable and which your observations upon the course of the trade during your residence at Lima have enabled you to suggest. If, however, you should succeed in concluding a Treaty which in your opinion would be acceptable to your own government, it would be indispensable that it should be ratified by the Peruvian Government before being sent hither for ratification by the government of the United States, and that the ratifications should be exchanged in this City.

Mr. Albert Fitz, the bearer of this communication, may be detained at Lima two months to await the exchange of the ratifications of the Treaty and to bear with him on his return the ratification of the Peruvian Government. If, however, that government should not ratify the treaty and you should consequently conclude a new one, you may detain him three months for the purpose of enabling him to bring hither the ratification thereof by that government and the original for the consideration of the President and Senate of the United States.

The instruction last cited reached Callao on March 6 (D.S., 8 Despatches, Peru, No. 65, March 8, 1851); when Clay found that the ratification by Peru of the treaty of 1850 would not be forthcoming, he stated that he had a full power to treat and was told by General Torrico in reply "that the President would give full powers to M^r Osma [who, when Peruvian Minister at Washington, had signed the treaty of 1848, and who at this time was President of the Chamber of Deputies, and later again Minister to the United States], to conclude a treaty" (*ibid.*, No. 70, June 7, 1851); by note of June 11 Clay formally communicated the fact of his full power; and to this, as Clay wrote, "General Torrico replied on the 23^d of June, stating that the President had conferred full Powers on him to treat with me. The preliminary steps will, however, be made by M^r Osma and when the articles have been arranged between him and myself, the negotia-

tion will be continued with General Torrico, who will sign the Treaty as Plenipotentiary of the Peruvian Government" (*ibid.*, No. 72, July 8, 1851, and enclosures); the draft treaty which Clay put forward is not textually available but is amply described in the despatch last cited, from which these paragraphs are excerpted:

I have submitted a draught of the treaty to the Peruvian Government, for its consideration, and the principal points in which it differs from the one, signed at Washington on the 13th of July last, are as follows:

1. To place our vessels, measuring over two hundred tons, upon an equality with Peruvian vessels, in the payment of tonnage and port dues, in Peruvian Ports and exempting vessels chartered expressly to carry Huano, from all tonnage and port charges whatsoever.

2. Placing the two nations upon an equality, in the payment of duties upon merchandise and articles of Commerce, imported into and exported from their respective Ports.

3. Securing to vessels, belonging to citizens of the United States, the right of discharging parts of their cargoes at different ports of Peru, during the same voyage, and of loading, in the same manner, on their outward voyage.

4. A stipulation, that any citizen of the United States who may establish steamers, within the territories of Peru, shall enjoy the same privileges and advantages accorded to the "Pacific, Steam Navigation Company", in taking in and discharging freight and carrying passengers, between the different ports of the Republic.

5. Granting to Whale Ships the right to sell, without paying tonnage or port dues and free of duty, articles and oil, to the amount of two hundred dollars to obtain supplies; and merchandise and oil, to the additional amount of one thousand dollars paying duty thereon, but with exemption from tonnage and port dues.

6. Stipulation, that whatever privileges may be granted to citizens of other nations, in digging or working for gold on the public lands, in the State of California, shall be also enjoyed by Peruvian citizens.

7. Omitting the clause in Article XXVII depriving Consuls of the use of flags.

8. Stipulating, that the word of honor of a commissioned Officer of a ship of war shall be sufficient, to identify deserters from such ship, so as to insure their arrest and detention.

9. Providing, that the Consuls and Vice Consuls shall be *ex officio* the Executors, or administrators, of their countrymen dying within their Consular jurisdiction, without a legal representative.

The preceding are the principal changes, which I have made in the treaty, signed by Mr Clayton and Mr Tirado; there are also other additions of minor importance.

I have held one conference with Mr Osma, and he has taken the draught of the treaty, to examine into the provisions and consult with the President upon them.

There may be difficulty in inducing the Peruvian Government to accede to some of the proposed modifications: but, I believe, the greater part will be adopted. There is every reason to hope, that the Convention will be signed before the opening of the Ordinary Sessions of Congress, on the 28th of this month. In that event, I shall press for its immediate presentation to that body for approval, so that the ratification of the Peruvian Government may be received at the Department, before the meeting of the Congress of the United States.

I beg to be authorised to employ a person to bear the treaty to the United States, for I think that few individuals can be found willing (as suggested in Despatch No 23 from the Department) "to take charge thereof without expense "to the Government", because there is a certain responsibility in conveying a document of that kind, which most persons would not gratuitously incur.

The proposals of Clay were for the most part accepted; his report on the treaty was made by his despatch of August 8, 1851, in these terms (*ibid.*, No. 75):

I have the honor to inform you, that a treaty of Friendship, Commerce and Navigation was signed in this Capital, on the 26th ultimo, by myself, as plenipotentiary of the United States of America, and Brigadier General, Don, Juan, Crisostomo Torrico, as plenipotentiary, on the part of the Republic of Peru. The treaty is comprised in forty Articles, and is in the English and Spanish languages.

In remarking upon the provisions of the Treaty, I beg to refer to despatches N^o: 38. and 55. addressed to the Department of State, on the 12th of Febr^y and 5th of October 1850, in which will be found Copies of some of the Articles of the Peruvian Commercial regulations, and, also, observations particularly connected with the subject.

The treaty just negotiated differs from those previously concluded with Peru in the following Points.

Article II, besides securing the reciprocal right of Commerce and Navigation and residence, to the citizens of the respective parties, provides that their dwellings and warehouses shall not be subjected to arbitrary visits or search; that they shall have the right of trading, opening retail stores and shops upon the same terms as native citizens; that their books, papers and accounts shall not be examined without a legal order from the proper authority: gives protection to the respective citizens and the free right of travelling. Besides the usual stipulation, protecting the citizens from forced loans and contributions, embargo and detention, without a sufficient indemnification, a proviso is added that the indemnification is always to be agreed upon and paid in advance. The privilege of opening retail stores and shops was inserted because by a decree of the Bolivian Government, issued some time ago, foreigners were prohibited from retail dealing, and I wished to prevent the Peruvian Government from following that example.

The wording of Article III is changed, so that where a "compensation" must be given to enjoy a favor, in commerce or navigation, granted conditionally to a third nation, it is to be, "as nearly as possible, of proportionate value and effect to be adjusted by mutual agreement", and not absolutely the "same", as is stipulated in the former treaties.

The provision in Article IV, relative to tonnage duties &c, virtually places the vessels belonging to citizens of the United States upon an equality with Peruvian; for few of those engaged in the trade with the ports of Peru measure under two hundred tons. The number of vessels of the United States which entered the port of Callao, from the 1st of January to the 30th of June 1851, was eighty one, measuring 30.918 tons and of these only nine were under 200 tons, one of which measured 198 tons.

By the 102^d Article of the Peruvian Commercial Regulations, foreign vessels pay at present a tonnage duty of twenty five cents per ton, and Peruvian only six and one quarter cents. The stipulation in Article IV makes the important reduction of Eighteen and three quarters cents, per ton, in favor of Vessels of the United States.

The concession made by the Peruvian Government in Article V, that the same rate of duties shall be paid upon merchandise imported in Vessels of the United States as when imported in Peruvian vessels, is also of importance: for by the 83^d Article of the Commercial regulations there is a bonus of twenty and thirty per cent, in favor of Peruvian citizens, varying according to the character of the vessels and the consignment of the cargoes. The distinction, made therein, is done away with, by the present Article fifth. (see Despatch N^o 38. February 12. 1850.) The indirect Trade is also secured by this Article.

The stipulations contained in Articles VI and VII were consigned to separate Articles, for the sake of clearness and precision.

Article VIII is not to be found in any of our treaties and is designed to protect our citizens from losses, that might be occasioned by the enactment of changes, in the Peruvian tariff, having a retroactive effect. The Article was first suggested, by a change of that nature made in the tariff of Russia in 1845, during my residence in St. Petersburg. (see Despatches N^o: 4 and 8 dated March 5/17 and

May 18/30 1846 [D.S., 15 Despatches, Russia.] Such laws are fortunately of rare occurrence, but I think it is well to provide against their effects, in countries where correct principles of Commerce are not understood and where little regard is paid to the rights or interests of foreigners, in times of disturbance and revolution.

Article IX reserves the coasting trade to the two parties, but secures to their vessels the right of discharging and taking in their cargoes, at different ports of entry in the same voyage, upon equal terms with national vessels.

By the stipulations in Article X, the Peruvian Government grants to citizens of the United States, the same privileges heretofore enjoyed and monopolised by the British Association, known by the name of the "Pacific Steam Navigation Company". It is to be hoped, that some of our enterprising citizens will take advantage of this concession to place a line of Steam Vessels on this coast: and it would be politic in the Government of the United States to encourage and assist the undertaking as, thereby, an uninterrupted chain of communication would be kept up from Valparaiso, or even Talcahuano,¹ to California and Oregon. The advantages of such a line are palpable and in the event of war, incalculable.

Article XI is the same as Article IV of the Treaty signed at Washington on the 13th of July 1850.

Article XII—The provisions in this Article are similar to those contained in the seventh Article of the Treaty with the Hawaiian Islands [Document 138], and, I trust, will be of great service to our whaling interests.

By the stipulations of Article XIII, the merchants, commanders and masters of vessels are guaranteed the full and entire liberty of managing their own business, by themselves or through Agents.

Article XIV. The privilege accorded by this Article is merely nominal and was inserted to correct the mistaken impression, entertained by the public in Peru, that Peruvian citizens were not placed upon an equality with other foreigners in the state of California.

Articles XV and XVII are similar to Articles XI and IX, of the Treaty signed February 9th 1848; and Articles XVI and XVIII, to the 9th and 8th Articles of the Treaty of the 13th July 1850; though the stipulations in the present Treaty are more ample.

Article XIX—The provisions in this are the same as those contained in the former treaties, with a clause to protect citizens of the United States from illegal arrest and imprisonment. This addition was suggested by the proceedings against Dr Kinney—see Despatch N^o 69 May 26. 1851 [D.S., 8 Despatches, Peru].

Article XX, securing religious liberty and the right of burial, and Articles XXI to XXXIII, inclusive, in relation to neutral rights, are, in substance and nearly word for word the same, as the articles upon those subjects, contained in the former treaties between the United States and Peru, with the exception that in the definition of a good and effective blockade, in Article XXIV of the present treaty, the words, "*invested or*", are inserted *before* the words, "attacked" by a force capable of preventing "the entry of the neutral".

Articles XXXIV to XXXVIII, in relation to the admission and privileges of Diplomatic and Consular Agents, are similar to those of the Treaty of February 9th 1848 with the exception in Article 37, which provides, that the word of honor of a commissioned officer shall be sufficient to identify deserters from a ship of war.

Article XXXIX stipulates that the Consuls and Vice Consuls, of the respective parties, shall be, in the absence of the legal representatives, *ex officio*, the Executors or Administrators of their countrymen, dying within their consulate districts; and regulates the manner of proceeding in such cases and of disposing of the property. Some provision of the kind was necessary, as the Peruvian authorities usually wish to interfere in the settlement of the estates of deceased foreigners, and, in many instances, tedious and vexatious lawsuits have arisen therefrom. Whereas, if the liquidation be left to the consul, as Executor or Administrator, the estate would probably be closed without any unnecessary delay, or annoyance.

¹ The seaport for Concepción, Chile, in approximately latitude 36°45' south.

The duration of the Treaty is limited to ten years, by Article XL; with the usual provision continuing it, from year to year, unless notice to the contrary be given by one of the parties. The clauses binding the citizens of both to its observance, and the manner of proceeding in case of an infringement of any of the provisions are added. The ratifications of the Treaty to be exchanged, at Washington, within eighteen months from the date of the signature thereof, or sooner if possible.

The Peruvian negotiator insisted upon the suppression of the word "Peace", in the title of the Treaty, and the clause rendering permanent and perpetual those parts which relate to Peace and Friendship; for the reason that the two countries were at peace, already, and therefore the treaty "could not strictly be called one of Peace"; and that inconvenience might arise from an agreement that any part of the treaty should be perpetual. As I did not think it of much importance that the word, or the clause, should be retained, I consented to omit them.

I shall press the Peruvian Minister to submit the Treaty to the Chambers, for their approval, at as early a date as possible. Nevertheless, I do not think it will be acted upon by the Legislature, for some weeks, as there is always difficulty in convening a joint Session of the two chambers.

I trust that the Treaty may meet with the approbation of the President, and that it will prove advantageous to the interests of the United States.

The treaty instrument was sent to the United States in charge of Mrs. Frederick Frye, of New York, who sailed from Callao on August 9 (D.S., 8 Despatches, Peru, No. 75, August 8, and No. 77, August 9, 1851). Acknowledgment was made by the instruction of September 19, 1851, signed by William S. Derrick, then Chief Clerk of the Department of State, wherein it was said that the treaty "appears to be judiciously framed and in many respects an improvement upon those which the Peruvian government failed to ratify" (D.S., 15 Instructions, Peru, 80).

The Peruvian Congress was holding from July 28 (D.S., 8 Despatches, Peru, No. 65, March 8, 1851); following consideration in committee (*ibid.*, No. 79, October 8, 1851), the necessary joint session for action on the treaty took place on November 18, when the treaty was approved; and Clay was duly informed that the treaty had been ratified on December 1 by the Government of Peru (9 *ibid.*, No. 84, December 6, 1851). From the despatch cited, this paragraph is quoted:

It is important that the present Treaty should be ratified, on the part of the United States, at the earliest convenient date: because the changes, in the Peruvian Commercial Regulations, rendered indispensable by its stipulations, can only be made after the ratifications are exchanged. Until those alterations shall be effected, the commerce and navigation of the United States cannot take advantage of the reduction in the tonnage duties, or of the provision in favor of Whale Ships.

Regarding the Peruvian commercial regulations, Clay wrote on April 18, 1852, as follows (*ibid.*, No. 98; see the convention with Peru signed at Lima July 4, 1857):

The Peruvian Government has published new Commercial Regulations, in compliance with an act of the Congress of the Republic, passed on the 13th of October 1851. They are comprised in twenty six Chapters and three hundred and ten Articles; to take effect in three months, after the 21st of March last, for products of nations situated on the shores of the Pacific, and in six months, for

produce of other parts of the world—whether the same be already deposited in the Custom house or shall be imported in future.

I have the honor to annex a translation of the most important articles. . . .

The present Regulations are most liberal, especially with respect to navigation; as foreign vessels are admitted to participate, to a great extent, in the Coasting Trade, and may enter places heretofore prohibited. Articles 81. and 110. do not, however, accord with the stipulations in Article XII of the Treaty signed in this city on the 26th of July last. It is desirable, therefore, that the treaty should be ratified and exchanged, at Washington, as early as possible; so that the whale ships of the United States may enjoy the benefit of those stipulations. No demand for their fulfilment can, of course, be made, to the Peruvian Government, before the ratification of the treaty takes place, on the part of the United States. There are also some minor points in the Commercial Regulations to be adjusted, after the treaty is promulgated.

TERMINATION OF THE TREATY

Article 22 of this treaty was in part "annulled and revoked" by Article 2 of the convention of July 22, 1856, declaring the rights of neutrals at sea; Article 12 was interpreted by the explanatory convention of July 4, 1857; and this treaty of 1851 (and therewith the interpretative convention of 1857) was terminated by notice from the Government of Peru dated December 9, 1862, effective one year later (D.S., 3 Notes from the Peruvian Legation; see D.S., 1 Notes to the Peruvian Legation, 228-29, December 15, 1862).

