

MEXICO : DECEMBER 30, 1853

*The Gadsden Treaty, signed at Mexico City December 30, 1853. Original in English and Spanish.*

*Submitted to the Senate February 10, 1854. Resolution of advice and consent, with amendments, April 25, 1854. Ratified by the United States June 29, 1854. Ratified by Mexico May 31, 1854. Ratifications exchanged at Washington June 30, 1854. Proclaimed June 30, 1854.*

In the Name of Almighty God

The Republic of Mexico and the United States of America desiring to remove every cause of disagreement, which might interfere in any manner with the better friendship and intercourse between the two Countries; and especially, in respect to the true limits which should be established, when notwithstanding what was covenanted in the Treaty<sup>1</sup> of Guadalupe Hidalgo in the Year 1848, opposite interpretations have been urged, which might give occasion to questions of serious moment: to avoid these, and to strengthen and more firmly maintain the peace, which happily prevails between the two Republics, the President of the United States has for this purpose, appointed James Gadsden Envoy Extraordinary and Minister Plenipotentiary of the same near the

En el nombre de Dios Todopoderoso.

La República de México y los Estados Unidos de América, dese-  
ando remover toda causa de desa-  
cuerdo que pudiera influir en  
algun modo en contra de la mejor  
amistad y correspondencia entre  
ambos Países, y especialmente por  
lo respectivo á los verdaderos  
límites que deben fijarse, cuando  
no obstante lo pactado en el Tra-  
tado<sup>1</sup> de Guadalupe Hidalgo en  
el año 1848, aún se hán susci-  
tado algunas interpretaciones en-  
contradas que pudieran ser oca-  
sion de cuestiones de grave tras-  
cendencia; para evitarlas, y afir-  
mar y corroborar mas la paz que  
felizmente reyna entre ambas Re-  
públicas, el Presidente de México  
há nombrado á este fin con el ca-  
rácter de Plenipotenciario *ad hoc*  
al Exfmo. Sr. D. Manuel Diez de  
Bonilla, Caballero Gran Cruz de  
la Nacional y Distinguida Orden

<sup>1</sup> Document 129.

Mexican Government, and the President of Mexico has appointed as Plenipotentiary "ad hoc" His Excellency Don Manuel Diez de Bonilla Cavalier Grand Cross of the National and Distinguished Order of Guadalupe, and Secretary of State and of the Office of Foreign Relations, and Don Jose Salazar Ylarregui and General Mariano Monterde as Scientific Commissioners invested with Full powers for this Negotiation who having communicated their respective Full Powers, and finding them in due and proper form, have agreed upon the Articles following

ARTICLE 1<sup>st</sup>

The Mexican Republic agrees to designate the following as her true limits with the United States for the future, Retaining the same dividing line between the two California's, as already defined and established according to the 5<sup>th</sup> Article of the Treaty of Guadalupe Hidalgo, the limits between the Two Republics shall be as follows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande as provided in the fifth article of the treaty of Guadalupe Hidalgo, thence as defined in the said article, up the middle of that river to the point where the parallel of 31°47' north latitude crosses the same, thence due west one hundred miles,

de Guadalupe, y Secretario de Estado y del Despacho de Relaciones Exteriores, y á los Señores D. José Salazar Ylarregui y General D. Mariano Monterde, como Comisarios Peritos investidos con Plenos Poderes para esta negociacion; y el Presidente de los Estados Unidos, á S.E. el Sr. Santiago Gadsden, Enviado Extraordinario y Ministro Plenipotenciario de los mismos Estados Unidos cerca del Gobierno Mexicano; quienes habiendose comunicado sus respectivos Plenos Poderes, y halládoslos en buena y debida forma, hán convenido en los artículos siguientes:

## ARTÍCULO 1º

La República Mexicana conviene en señalar para lo sucesivo como verdaderos límites con los Estados Unidos, los siguientes: Subsistiendo la misma línea divisoria entre las dos Californias, tal cual está ya definida y marcada conforme al artículo quinto del Tratado de Guadalupe Hidalgo, los límites entre las dos Repúblicas serán los que siguen. Comenzando en el Golfo de Mejico á tres leguas de distancia de la costa, frente á la desembocadura del Rio grande, como se estipuló en el artículo quinto del Tratado de Guadalupe Hidalgo: de allí, segun se fija en dicho artículo, hasta la mitad de aquel Rio al punto donde la paralela de 31°47' de latitud Norte atraviesa el mismo

thence south to the parallel of 31°20' north latitude, thence along the said parallel of 31°20' to the 111th meridian of longitude west of Greenwich, thence in a straight line to a point on the Colorado river twenty english miles below the junction of the Gila and Colorado rivers, thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico.

For the performance of this portion of the Treaty each of the two Governments shall nominate one Commissioner to the end that, by common consent, the two thus nominated having met in the City of Paso del Norte, three months after the exchange of the ratifications of this Treaty may proceed to survey and mark out upon the land the dividing line stipulated by this article, where it shall not have already been surveyed and established by the Mixed Commission according to the Treaty of Guadalupe keeping a Journal and making proper plans of their operations. For this purpose if they should Judge it necessary. The contracting Parties shall be at liberty each to unite to its respective Commissioner Scientific or other assistants, such as Astronomers and Surveyors whose concurrence shall not be considered necessary for the settlement and ratification of a true

Rio: de alli, cien millas en linea recta al Oeste: de alli al Sur á la paralela de 31°20' de latitud norte: de alli siguiendo dicha paralela de 31°20', hasta el 111 del meridiano de longitud oeste de Greenwich: de alli, en linea recta á un punto en el Rio Colorado, veinte millas inglesas abajo de la union de los Rios Gila y Colorado, de alli, por la mitad del dicho Rio colorado, Rio arriba, hasta donde encuentra la actual linea divisoria entre los Estados Unidos y Meji-co.—Para la egecucion de esta parte del Tratado, cada uno de los dos Gobiernos nombrará un Comisario, á fin de que por comun acuerdo, los dos así nombrados, que se reunirán en la Ciudad del Pasodel Norte, tres meses despues del cange de las ratificaciones de este Tratado, procedan á recorrer y demarcar sobre el terreno la linea divisoria estipulada por este artículo, en lo que no estuviere ya reconocida y establecida por la Comision Mixta segun el Tratado de Guadalupe; llevando al efecto Diarios de sus procedimientos, y levantando los planos convenientes. A este efecto, si lo juzgaren necesario las Partes contratantes, podrán añadir á su respectivo Comisario, alguno ó algunos auxiliares, bien facultativos ó no, como Agrimensores, Astrónomos. &º; pero sin que por esto su concurrencia se considere necesaria para la fijacion y ratificacion como verdadera línea divisoria entre ambas

line of division between the two Republics; that line shall be alone established upon which the Commissioners may fix, their consent in this particular being considered decisive and an integral part of this Treaty, without necessity of ulterior ratification or approval, and without room for interpretation of any kind by either of the Parties contracting

The dividing line thus established shall in all time be faithfully respected by the two Governments without any variation therein, unless of the express and free consent of the two, given in conformity to the principles of the Law of Nations, and in accordance with the Constitution of each country respectively

In consequence, the stipulation in the 5<sup>th</sup> Article of the Treaty of Guadalupe upon the Boundary line therein described is no longer of any force, wherein it may conflict with that here established, the said line being considered annulled and abolished wherever it may not coincide with the present, and in the same manner remaining in full force where in accordance with the same

#### ARTICLE II.

The government of Mexico hereby releases the United States from all liability on account of the obligations contained in the eleventh article of the treaty of

Repúblicas; pues dicha línea solo será establecida por lo que convengan los Comisarios, reputándose su conformidad en este punto, como decisiva, y parte integrante de este Tratado, sin necesidad de ulterior ratificación ó aprobación, y sin lugar á interpretación de ningun género por cualquiera de las dos Partes contratantes.

La línea divisoria establecida de este modo, será en todo tiempo fielmente respetada por los dos Gobiernos, sin permitirse ninguna variación en ella, sino es de expreso y libre consentimiento de los dos, otorgado de conformidad con los principios del Derecho de gentes, y con arreglo á la Constitución de cada País respectivamente.—En consecuencia, lo estipulado en el artículo quinto del Tratado de Guadalupe sobre la línea divisoria en él descrita, queda sin valor en lo que repugne con la establecida aquí; dándose por lo mismo por derogada y anulada dicha línea en la parte en que no es conforme con la presente, así como permanecerá en todo su vigor en la parte en que tuviere dicha conformidad con ella.

#### ARTÍCULO II

El Gobierno de Mexico por este artículo exime al de los Estados Unidos de las obligaciones del artículo once del Tratado de Guadalupe Hidalgo, y dicho artículo y

Guadalupe Hidalgo, and the said article and the thirty third article of the treaty <sup>1</sup> of amity, commerce and navigation between the United States of America and the United Mexican States concluded at Mexico, on the fifth day of April, 1831, are hereby abrogated.

#### ARTICLE III.

In consideration of the foregoing stipulations, the government of the United States agrees to pay to the government of Mexico, in the city of New York, the sum of ten millions of dollars, of which seven millions shall be paid immediately upon the exchange of the ratifications of this treaty, and the remaining three millions as soon as the boundary line shall be surveyed, marked, and established.

#### ARTICLE 4

The Provisions of the 6<sup>th</sup> and 7<sup>th</sup> Articles of the Treaty of Guadalupe Hidalgo having been rendered nugatory for the most part by the Cession of Territory granted in the First Article of this Treaty, the said Articles are hereby abrogated and annulled and the provisions as herein expressed substituted therefor—The Vessels and Citizens of the United States shall in all Time have free and uninterrupted passage through the Gulf of California to and from their possessions

el treinta y tres, del Tratado <sup>1</sup> de Amistad, comercio y Navegacion entre los Estados Unidos Mexicanos y los Estados Unidos de America, concluido en Mexico el dia cinco de Abril de mil ochocientos treinta y uno quedan por este derogados.

#### ARTÍCULO III

En consideracion á las anteriores estipulaciones, el Gobierno de los Estados Unidos, conviene en pagar al Gobierno de Mexico en la ciudad de Nueva York, la suma de diez millones de pesos, de los cuales, siete millones se pagarán luego que se verifique el cange de las ratificaciones de este Tratado, y los tres millones restantes tan pronto como se reconosca, marque y fije la linea divisoria.

#### ARTÍCULO IV.

Habiendose hecho en su mayor parte nugatorias las estipulaciones de los artículos sexto y séptimo del Tratado de Guadalupe Hidalgo por la cesion de territorio hecha en el artículo 1º de este Tratado, aquellos dichos artículos quedan por este derogados y anulados, y las estipulaciones que á continuacion se espresan, substituidas en lugar de aquellas.—Los buques y Ciudadanos de los Estados Unidos tendrán en todo tiempo libre y no interrumpido tránsito por el Golfo de California para sus posesiones,

<sup>1</sup> Document 70.

situated North of the Boundary line of the Two Countries. It being understood that this passage is to be by navigating the Gulf of California and the river Colorado, and not by land, without the express consent of the Mexican Government, and precisely the same provisions, stipulations and restrictions in all respects are hereby agreed upon and adopted and shall be scrupulously observed and enforced by the Two Contracting Governments in reference to the Rio Colorado, so far and for such distance as the middle of that River is made their common Boundary Line, by the First Article of this Treaty

The several Provisions, Stipulations and restrictions contained in the 7<sup>th</sup> Article of the Treaty of Guadalupe Hidalgo, shall remain in force only so far as regards the Rio Bravo del Norte below the initial of the said Boundary provided in the First Article of this Treaty That is to say below the intersection of the 31°47'30" parallel of Latitude with the Boundary Line established by the late Treaty dividing said river from its mouth upwards according to the 5<sup>th</sup> Article of the Treaty of Guadalupe

#### ARTICLE 5

All the provisions of the Eighth and Ninth Sixteenth and Seventeenth Articles of the Treaty of

y desde sus posesiones sitas al Norte de la linea divisoria de los dos Paises; entendiendose que ese tránsito se há de hacer navegando por el Golfo de California y por el Rio Colorado, y no por tierra, sin espreso consentimiento del Gobierno Mexicano.—Y precisamente, y bajo todos respectos, las mismas disposiciones, estipulaciones y restricciones quedan convenidas y adoptadas por este artículo, y serán escrupulosamente observadas y hechas efectivas por los dos Gobiernos contratantes, con referencia al Rio Colorado por tal distancia, y en tanto pue a mediania de ese Rio queda como su linea divisoria comun por el artículo 1º de este Tratado.—Las diversas disposiciones, estipulaciones y restricciones contenidas en el artículo séptimo del Tratado de Guadalupe Hidalgo, solo permanecerán en vigor en lo relativo al Rio Bravo del Norte abajo del punto inicial de dicho límite estipulado en el artículo 1º de este Tratado; es decir, abajo de la interseccion del paralelo de 31°47'30" de latitud con la linea divisoria establecida por el reciente Tratado que divide dicho rio desde su embocadura arriba de conformidad con el artículo quinto del Tratado de Guadalupe.

#### ARTÍCULO V.

Todas las estipulaciones de los artículos octavo, noveno, décimo-sexto y décimo-sétimo del Tratado

Guadalupe Hidalgo shall apply to the Territory ceded by the Mexican Republic in the First Article of the present Treaty and to all the rights of persons and property both civil and ecclesiastical within the same, as fully and as effectually as if the said Articles were herein again recited and set forth

## ARTICLE 6

No Grants of Land within the Territory ceded by the First Article of This Treaty bearing date subsequent to the day Twenty fifth of September—when the Minister and Subscriber to this Treaty on the part of the United States proposed to the Government of Mexico to terminate the question of Boundary, will be considered valid or be recognized by the United States, or will any Grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the Archives of Mexico

## ARTICLE 7

Should there at any future period (which God forbid) occur any disagreement between the two Nations which might lead to a rupture of their relations and reciprocal peace, they bind themselves in like manner to procure by every possible method the adjustment of every difference, and should they still in this manner

de Guadalupe Hidalgo, se aplicarán al territorio cedido por la República Mexicana en el artículo 1º del presente Tratado, y á todos los derechos de persona y bienes, tanto civiles como eclesiásticos, que se encuentren dentro de dicho territorio, tan plena y tan eficazmente como si dichos artículos de nuevo se insertáran é incluyéran á la letra en este.

## ARTÍCULO VI.

No se considerarán válidas ni se reconocerán por los Estados Unidos ningunas concesiones de tierras en el territorio cedido por el artículo 1º de este Tratado, de fecha subsecuente al dia veinte y cinco de Septiembre en que el Ministro y Signatario de este Tratado por parte de los Estados Unidos propuso al Gobierno de México dirimir la cuestion de límites; ni tampoco se respetarán ni considerarán como obligatorias ningunas concesiones hechas con anterioridad que no hayan sido inscritas y debidamente registradas en los archivos de México.

## ARTÍCULO VII

Si en lo futuro, (que Dios no permita,) se suscitare algun desacuerdo entre las dos Naciones, que pudiera llevarlas á un rompimiento en sus relaciones y paz recíproca, se comprometen así mismo á procurar por todos los medios posibles el allanamiento de cualquiera diferencia; y si aún de esta manera no se consiguere,

not succeed, never will they proceed to a declaration of War, without having previously paid attention to what has been set forth in Article 21 of the Treaty of Guadalupe for similar cases; which Article as well as the 22<sup>d</sup> is here re-affirmed

#### ARTICLE 8.

The Mexican government having on the 5<sup>th</sup> of February 1853 authorized the early construction of a plank and railroad across the Isthmus of Tehuantepec, and to secure the stable benefits of said transit way to the persons and merchandise of the citizens of Mexico and the United States, it is stipulated that neither government will interpose any obstacle to the transit of persons and merchandise of both nations; and at no time shall higher charges be made on the transit of persons and property of citizens of the United States than may be made on the persons and property of other foreign nations, nor shall any interest in said transit way, nor in the proceeds thereof, be transferred to any foreign government.

The United States by its Agents shall have the right to transport across the Isthmus, in closed bags, the mails of the United States not intended for distribution along the

jamás se llegará á una declaracion de guerra sin haber observado previamente cuanto en el artículo veintiuno del Tratado de Guadalupe quedó establecido para semejantes casos, y cuyo artículo se dá por reafirmado en este Tratado, así como el veintidos.

#### ARTÍCULO VIII.

Habiendo autorizado el Gobierno Mexicano en cinco de Febrero de mil ochocientos, cincuenta y tres, la pronta construccion de un camino de madera y de un ferro-carril en el Ystmo de Tehuantepec, para asegurar de una manera estable los beneficios de dicha via de comunicacion á las personas y mercancias de los Ciudadanos de Mexico y de los Estados Unidos, se estipula que ninguno de los dos Gobiernos pondrá obstaculo alguno al transito de personas y mercancias de ambas Naciones, y que en ningun tiempo se impondrán cargas por el transito de personas y propiedades de Ciudadanos de los Estados Unidos, mayores que las que se impongan á las personas y propiedades de otras Naciones extranjeras, ni ningun interes en dicha via de comunicacion ó en sus productos, se transferirá á un Gobierno extranjero.

Los Estados Unidos tendrán derecho de transportar por el Ystmo por medio de sus agentes y en valijas cerradas las malas de los Estados Unidos que no han de



line of communication; also the effects of the United States government and its citizens, which may be intended for transit, and not for distribution on the Isthmus, free of custom-house or other charges by the Mexican government. Neither passports nor letters of security will be required of persons crossing the Isthmus and not remaining in the country.

When the construction of the railroad shall be completed, the Mexican government agrees to open a port of entry in addition to the port of Vera Cruz, at or near the terminus of said road on the Gulf of Mexico.

The two governments will enter into arrangements for the prompt transit of troops and munitions of the United States, which that government may have occasion to send from one part of its territory to another, lying on opposite sides of the continent.

The Mexican government having agreed to protect with its whole power the prosecution, preservation and security of the work, the United States may extend its protection as it shall judge wise to it when it may feel sanctioned and warranted by the public or international law.

#### ARTICLE 9

This Treaty shall be ratified, and the respective ratifications

distribuirse en la extension de la linea de comunicacion y tambien los efectos del Gobierno de los Estados Unidos, y sus Ciudadanos que solo vayan de transito y no para distribuirse en el Ystmo estarán libres de los derechos de aduana ú otros, impuestos por el Gobierno mexicano. No se exigirá á las personas que atraviesen el Ystmo, y no permanescan en el pais, pasaportes ni cartas de seguridad.

Cuando se concluya la construccion del ferro-carril, el Gobierno Mexicano conviene en abrir un puerto de entrada, ademas del de Veracruz en donde termina dicho ferro-carril en el Golfo de Mexico ó cerca de ese punto

Los dos Gobiernos celebrarán un arreglo para el pronto transito de tropas y municiones de los Estados Unidos, que este Gobierno tenga ocasion de enviar de una parte de su territorio á otra, situadas en lados ópuestos del continente.

Habiendo convenido el Gobierno Mexicano en proteger con todo su poder la construccion, conservacion y seguridad de la obra los Estados Unidos de su parte podrán impartirle su proteccion siempre que fuere apoyado y arreglado al derecho de gentes.

#### ARTÍCULO IX.

Este Tratado será ratificado, y las ratificaciones cangeadas en la

shall be exchanged at the City of Washington, within the exact period of six months from the date of its signature or sooner if possible

Ciudad de Washington, en el preciso término de seis meses ó antes si fuere posible, contado ese término desde su fecha.

In testimony whereof, We the Plenipotentiaries of the contracting parties have hereunto affixed our hands and seals at Mexico the—Thirtieth (30<sup>th</sup>)—day of December in the Year of Our Lord one thousand eight hundred and fifty three, in the thirty third year of the Independence of the Mexican Republic, and the seventy eighth of that of the United States

En fé de lo cual, Nosotros los Plenipotenciarios de las Partes Contratantes lo hemos firmado y sellado en México, el día treinta de Diciembre del año de Nuestro Señor mil ochocientos cincuenta y tres, trigésimo tercero de la Independencia de la República Mexicana, y septuagésimo octavo de la de los Estados Unidos.

JAMES GADSDEN

[Seal]

[Seal] MANUEL DIEZ DE

MANUEL DIEZ DE

BONILLA

BONILLA

[Seal]

[Seal] J. MARIANO MONTERDE

JOSÉ SALAZAR YLARREGUI

[Seal]

[Seal] JOSÉ SALAZAR YLARREGUI

J. MARIANO MONTERDE

[Seal]

[Seal] JAMES GADSDEN

#### NOTES

Although the most important clauses of this treaty were not contained in the instrument signed at Mexico City but were framed in the Senate of the United States, it has long been known as the Gadsden Treaty, from the name of the Plenipotentiary of the United States, James Gadsden.

It will be seen from the treaty text that the principle of the *alternat* was not fully observed; in the opening phrase of the preamble and in the final words of the testimonium clause the United States is named second in both versions.

In the text of the treaty following the headnote, the wording of the preamble, Articles 4, 5, 6, 7, and 9, and the testimonium clause, is from the signed original, subject only to these three slight changes, owing to Senate amendments: at the end of Article 7 "reaffixed" is changed to "re-affirmed" and, in the Spanish, "reproducido" to "reafirmado"; in Article 9 "four" becomes "six" and "cuatro" becomes "seis"; and in the final clause "Seventy Seventh" is corrected to "seventy eighth" and "séptimo" to "octavo". The opening of Article 1, to and including "the limits between the Two Republics shall" ("los límites entre las dos Repúblicas"), and all that part of the article from "For the performance" ("Para la egecucion") to its close, are from the signed original; the intermediate portion of

Article 1, the boundary description, is, for the English, from the duplicate United States instrument of ratification (wherein is recited almost literally the attested Senate resolution of advice and consent), and, for the Spanish, from the Mexican instrument of ratification. The English of Articles 2, 3, and 8 is from the duplicate United States instrument of ratification; the Spanish of those three articles is from the Mexican instrument of ratification. The varied styles of the article numbers from 2 to 9 of the English and Spanish versions are those used respectively in the Senate resolution and in the Mexican instrument of ratification.

Two works of particular value in the study of the Gadsden Treaty are frequently cited in these editorial notes: Garber, *The Gadsden Treaty* (cited as "Garber") and Rippy, *The United States and Mexico* (cited as "Rippy").

#### THE FILE PAPERS

Four of the papers in the treaty file were bound together (the binding ribbons are now broken); in order of date these are (1) the signed original of the treaty, in English and Spanish, with the English version written on the left pages;<sup>1</sup> (2) the attested resolution of the Senate of April 25, 1854 (see *Executive Journal*, IX, 312-15); (3) the duplicate United States instrument of ratification of June 29, 1854, wherein the treaty is referred to as "hereunto annexed" and the extensive Senate amendments are recited word for word as in the attested Senate resolution; and (4) the original proclamation of June 30, 1854, drafted in the customary form of publication, so as to read as if it included a running text of the treaty "as amended by the Senate of the United States, and being in the English and Spanish languages" (see 10 *Statutes at Large*, 1031-37).

The Mexican instrument of ratification includes a running text of the amended treaty in Spanish and English, the former version being in the left columns. That instrument reads in translation as follows:

Antonio López de Santa Anna

Well-deserving of the country, General of Division, Grand Master of the National and Distinguished Order of Guadalupe, Knight Grand Cross of the Royal and Distinguished Spanish Order of Charles III, and President of the Mexican Republic, to all to whom these presents shall come, know ye:

That, a treaty between the Mexican Republic and the United States of America having been concluded and signed in this capital on the 30th day of December of last year, 1853, by Plenipotentiaries of the two Governments duly and respectively authorized to that end, which treaty, with the modifications subsequently agreed to therein by both parties, is of the following form and tenor:

[Here follows the treaty text as amended, in Spanish and English]

Now, therefore, having seen and examined the said treaty, in the exercise of the powers which the nation has been pleased to confer upon me, I accept, ratify, and confirm it and promise in the name of the Mexican Republic to fulfil and observe it and to cause it to be fulfilled and observed.

<sup>1</sup> The Senate amendments are roughly indicated throughout the English version in red pencil; brackets show omissions, short insertions or substitutions are written in, and brief phrases represent the longer insertions.

Given at the National Palace of Mexico, signed with my hand, authenticated with the great seal of the nation, and countersigned by the Secretary of State and of the Office of Foreign Relations on the thirty-first day of the month of May of the year of Our Lord one thousand eight hundred and fifty-four, the thirty-fourth of the independence of the Republic.

A. L. DE S<sup>ta</sup> ANNA

MANUEL DIEZ DE BONILLA  
[Seal appendant]

The certificate of the exchange of ratifications in the file is in Spanish, of this tenor (translation):

Mexican Legation  
in the  
United States of America

We, the undersigned, Juan N. Almonte, General of Division, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic near the Government of the United States of America, and William L. Marcy, Secretary of State of the United States, certify:

That, having met this day in order to exchange the ratifications of the treaty concluded between our respective Governments on the thirtieth of December last, with the modifications subsequently agreed to, the said exchange was made by us, after duly comparing the ratifications, the one with the other and both with the original of the said treaty and its amendments.

In faith whereof we have signed these presents and affixed thereto our respective seals at Washington the thirtieth of June of the year of the Lord one thousand eight hundred and fifty-four.

J. N. ALMONTE [Seal]  
W. L. MARCY. [Seal]

It is not to be doubted that the example of the certificate of exchange which was delivered to the Mexican Minister was written in English and that the Secretary of State was named first therein; the procedure, not usual or correct, may have been either inadvertent or deliberate. On June 29, 1854 (one day before the exchange), this note was written by Marcy (D.S., 6 Notes to the Mexican Legation, 391; "the Mexican copy of the ratified Treaty" might mean either the Mexican instrument of ratification or the delivered ratification of the United States):<sup>1</sup>

The Secretary of State presents his compliments to General Almonte, and has the honor to submit herewith, a draft of the form of certificate which it is proposed to sign and exchange with the exchange of ratifications of the Treaty of the 30<sup>th</sup> December, last.

The Secretary of State suggests that a copy of this certificate be prepared in the Spanish language in order that it may accompany the Mexican copy of the ratified Treaty.

Also in the file is an unsigned paper of Department of State origin (dating not earlier than 1855) which, by comparison and translation, purports to show discrepancy between the English and Spanish versions of the opening words of Article 2 of the treaty.

<sup>1</sup> The same form of note is found elsewhere, as in the case of the convention with Peru of July 4, 1857 (see D.S., 1 Notes to the Peruvian Legation, 189, October 12, 1858). The certificate of exchange in the file of that convention is in English.

## THE FULL POWERS

The Plenipotentiary of the United States, James Gadsden, Minister to Mexico, had been duly instructed to negotiate and sign a treaty but had no full power; a treaty with Mexico was in contemplation from the outset of Gadsden's mission, although by his instructions of July 15, 1853, written before he departed for Mexico City, he was not authorized to sign one; the definitive instructions of October 22, 1853, were not sent in writing, but by a messenger charged to deliver them verbally (the instructions of both dates are printed below under the heading "The Negotiations"); whether it was then decided by Secretary of State Marcy that no full power was to be issued and entrusted to that messenger or whether the matter was overlooked, cannot now be known.

In lieu of a full power, a note written by Gadsden, stating his authority, was delivered and accepted (see the protocol of the conference of December 10, 1853, and Gadsden's despatch No. 16, of December 16, 1853, both printed below, the latter in part only, under the heading "The Negotiations").

The full powers of the Mexican Plenipotentiaries are mentioned in each of the two papers just cited; and there is the usual recital of communication of powers in the preamble of the treaty; but the wording of the Mexican full powers is not available. It appears that those full powers were issued by November 30, 1853 (see the note of Bonilla to Gadsden of that date, printed in translation below under the heading "The Negotiations").

For the exchange of ratifications at Washington on June 30, 1854, there were full powers on each part (see D.S., 6 Notes to the Mexican Legation, 391-92, June 30 and July 1, 1854); the power issued to Secretary of State Marcy, a certified copy of which was sent to the Mexican Minister, General Almonte, on the day of the exchange (*ibid.*), was in this form (D.S., 4 Credences, 57):

Franklin Pierce, President of the United States of America,

To all to whom these presents shall come, Greeting:

Know Ye, that I hereby authorize William L. Marcy, Secretary of State of the United States, to effect, with any person duly authorized by the Mexican government for that purpose, the exchange of my ratification for that of the President of the Mexican Republic, of the Treaty between the United States and that Republic, signed at Mexico, on the thirtieth day of December last, as amended by the Senate of the United States.

In witness whereof, I have caused the Seal of the United States to be hereunto affixed.

(LS) Given under my hand, at the City of Washington, the twenty ninth day of June, in the year of our Lord one thousand eight hundred and fifty-four, and in the seventy-eighth year of the Independence of the United States.

FRANKLIN PIERCE.

By the President:

W. L. MARCY,

Secretary of State.

In a note of July 1, 1854, Almonte wrote that, pursuant to Marcy's request, he therewith transmitted a certified copy of his full power (D.S.; 7 Notes from the Mexican Legation). A red-ink footnote to that note is to the effect that the enclosure is filed with the treaty; but there is no full power in the treaty file. With the note there are two copies of the full power, one of which is certified by Almonte. The date of the power is January 3, 1854, only four days after signature of the treaty. The certified copy reads thus in translation:

Mexican Legation  
in the

United States of America

Antonio López de Santa Anna, well-deserving of the country, General of Division, Grand Master of the National and Distinguished Order of Guadalupe, Knight Grand Cross of the Royal and Distinguished Spanish Order of Charles III, President of the Mexican Republic, etc., etc., etc.

To all to whom these presents shall come, know ye:

That, having complete confidence in the enlightenment and integrity of His Excellency the General of Division Don Juan N. Almonte, Envoy Extraordinary and Minister Plenipotentiary of the Republic in the United States of America, I have decided to confer upon him, as by these presents I do confer upon him, ample and sufficient powers that, with the person or persons duly authorized by the Government of the said States, he may proceed to the exchange of the ratifications of the Treaty of Friendship, Limits, and Definitive Settlement between the two nations which was signed at this capital on the 30th day of December of last year.

In faith whereof I have caused these presents to be issued, signed with my hand, authenticated with the great seal of the nation, and countersigned by the Secretary of State and of the Office of Foreign Relations, at the National Palace of Mexico on the third day of the month of January one thousand eight hundred and fifty-four.

ANTONIO L. DE S<sup>ta</sup> ANNA

MANUEL DIEZ DE BONILLA  
[Place of the seal]

Mexican Legation  
in the

United States of America

Juan N. Almonte, General of Division, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic near the Government of the United States of America:

I certify that the annexed document is a true and exact copy of the full powers that have been conferred on me for the purpose of effecting the exchange of the ratifications of the treaty lately concluded between Mexico and the United States, and that originals are in the archives of this Legation.

In testimony whereof I sign these presents and have authenticated them with the seal of the Legation, in the city of Washington on the thirtieth day of June of the year of the Lord one thousand eight hundred and fifty-four and the thirty-fourth of the independence of the Mexican Republic.

[Seal]

J. N. ALMONTE

#### BACKGROUND

The Treaty of Guadalupe Hidalgo (Document 129) entered into force on May 30, 1848; during the five years following, various questions arose to disturb the "concord, harmony and mutual confidence" of "good neighbours" which, by the preamble of that treaty,

were intended to be assured; one of the major problems to be dealt with by the Pierce administration when it came into office (March 4, 1853) was that of relations with Mexico; almost contemporaneously (April 20, 1853) Santa Anna again became President of Mexico, ruling without a legislature and under disturbed and difficult conditions, political and financial.

The dispute over the location of the line running westwardly from the Rio Grande along the southern boundary of New Mexico, which had its origin in the wording of Article 5 of the Treaty of Guadalupe Hidalgo, was open; the demarcation of the boundary by Commissioners and Surveyors of the two countries had ceased; the area involved was about 6,000 square miles, including the Mesilla Valley; there were matters of administration and jurisdiction which locally were critical; and in the United States interest in the difference and in the frontier between the Rio Grande and the Colorado in its entirety was increased by rival projects for a transcontinental railway (see vol. 5, pp. 419-21, 368-70, and authorities there cited).

The Indian problem of the frontier was real and urgent. Article 33 of the treaty of April 5, 1831, contained reciprocal clauses on the subject (Document 70; the treaty of 1831 had been revived by Article 17 of the Treaty of Guadalupe Hidalgo, except for stipulations not consistent therewith); with the frontier as it had existed prior to the annexation of Texas and the Mexican War (1845-48) those clauses were of comparatively minor importance; but with the extension of the boundary between the two countries to the Pacific, Article 11 of the Treaty of Guadalupe Hidalgo was written; and the obligations on the part of the United States therein included were very sweeping and stringent; in performance those obligations had proved to be exceedingly onerous and difficult (see Rippey, 68-84; Garber, 26-40); and the Government of Mexico earnestly contended that they had not been fulfilled. During the Fillmore administration efforts were made to negotiate a release from the mentioned obligations; in an instruction from Secretary of State Webster to Robert P. Letcher, Minister to Mexico, dated August 19, 1851, this was written (D.S., 16 Instructions, Mexico, 279-85; printed in full in Manning, *Diplomatic Correspondence of the United States, 1831-1860*, IX, 89-91):

The President deems it of the utmost importance that we should be released from the stipulations in regard to Indians contained in the 11th. Article of the Treaty of Guadalupe Hidalgo, and the 33d. of that of 1831. The stipulations in the former are not reciprocal like those upon the same subject in the 5th. Article of the Treaty<sup>1</sup> with Spain of 1795, and the 33d. Article of the Treaty of 1831, are unlimited in duration and impose upon this government the obligation to prevent and punish the depredations of United States Indians in Mexico, without a corresponding stipulation on the part of that government to restrain, prevent and punish depredations of Mexican Indians upon the United States.

There can be no doubt that the inhabitants of the northern States of Mexico have suffered severely from Indian depredations since the Treaty of Guadalupe Hidalgo went into operation, and the Mexican government has complained of them both in representations to our Legation at Mexico and to this Department. It is understood that the suffering parties intend to ask amends from this government for the losses and injuries which they have sustained, but no claims therefor

<sup>1</sup> Document 18.

have yet been formally presented. The treaty, however, does not promise reparation to individual Mexicans who may suffer from the ravages of our Indians but binds this government to restrain, prevent and punish them in the same manner as if they had been directed against our own citizens. This has hitherto been done. The hostile acts of the Indians whose homes are in the territory ceded to the United States by the Treaty of Guadalupe Hidalgo, have not been confined to Mexican citizens only, but have probably been as frequent, as destructive and as barbarous on citizens of the United States, especially of North Western Texas, New Mexico and California. In the application of its disposable force for the purpose of checking these outrages, this government has been entirely impartial and as this is all that the treaty requires, neither the Mexican Government nor the aggrieved inhabitants of that country have just cause of complaint against the government of the United States. It is obvious that along a frontier of such an extent, most of it a rugged wilderness, without roads of any kind and impassable, not only by wheeled vehicles but perhaps even by horses, no means which could have been employed since the Treaty of Guadalupe Hidalgo went into operation, would have sufficed to prevent incursions of United States Indians into Mexican territory. The subsistence, forage and ammunition of the troops must necessarily have been conveyed from one or the other extremity of the line of boundary, and without roads, this would have been impracticable. It is also notorious that that part of the boundary which extends from the Rio Grande to the Gila, and which is not a natural line, such as those rivers afford, has not yet even been marked. This would in any event have rendered it uncertain where a road for the conveyance of our military stores ought to have been constructed or where our troops should have been posted. The probability, also, that savages dwell on both sides of at least this part of the line, would render it uncertain, in the absence of land marks, whether depredations from that quarter have been committed by United States or by Mexican Indians.

But although we cannot acknowledge that we have been unfaithful to Mexico on this subject and cannot acquiesce in any construction of the treaty which would make that an absolute which must only have been intended for a relative obligation, if the Treaty should remain as it is, this government will be constantly liable to imputations of bad faith. Exaggerated and fraudulent claims for indemnification will be preferred against it, and there will be no hope of preserving harmonious relations with the government of Mexico. Under these circumstances the President wishes you to propose to that government a Convention releasing the United States from the obligations contained in the 11th. Article of the Treaty of Guadalupe Hidalgo and containing a mutual release of those embraced in the 33d. article of the Treaty of 1831.

A Full Power, authorizing you to conclude and sign such a Convention is herewith communicated to you. It may be that Mexico expected great results from the stipulations in those Articles. Indeed, Mr. de la Rosa has stated in a note to this Department, that she would never have assented to the Treaty of Guadalupe Hidalgo had it not been for the obligations assumed by this government in its 11th. Article. Still, as it is quite probable she mistakes its real meaning and does not appreciate the difficulties to be surmounted in carrying it into effect according to her understanding of it, if these considerations are properly presented to her, she may be willing to accede to our proposition. As an inducement however, for her to adopt this course, the President would be willing that the Convention should contain stipulations to pay Mexico a sum not exceeding \_\_\_\_\_ dollars assuming the 3d. and 4th. instalments<sup>1</sup> due under the Convention of 1843, which were never paid, and, also assuming the payment of such claims of citizens of the United States against her as may have originated since the date of the Treaty of Guadalupe Hidalgo. These claims are not numerous, but the aggrieved parties are impatient for relief, which they cannot expect the Mexican government will

<sup>1</sup> The third instalment under the convention of January 30, 1843 (Document 100), was duly paid; the writer of this instruction was thinking of the fourth and fifth instalments (see vol. 4, pp. 497-98) and overlooked the fact that all liability of Mexico under the convention of 1843 and for the claims adjudicated under the convention of April 11, 1839 (Document 89), was ended by Article 13 of the Treaty of Guadalupe Hidalgo.



of its own accord extend to them in the present state of its finances, and it is impossible to say when their condition will be more flourishing. You are aware that some of the claims are for violations of the 19th. Article of the treaty, occasioned by the refusal of the Mexican authorities to allow commodities imported prior to the surrender of the Custom Houses, to be carried into the interior and sold. . . . There are probably others which have not been presented either to the Legation at Mexico or to this Department. In order that the parties interested in such cases may not be debarred from relief by some future arrangement, it would be advisable to limit the assumption by this government and the release to Mexico, to such claims as may have been so presented. This course has been adopted on former occasions. The draft<sup>1</sup> of a Convention which you will herewith receive contains such stipulations as are desirable, but you may deviate from it in any manner which your own judgment and the exigencies of the negotiation may dictate and require, except that the sum authorized to be paid to Mexico is considered as a maximum. You will of course endeavor to induce her to accept a smaller sum.

The objects which Mexico sought to compass by the 11th. Article of the Treaty of Guadalupe Hidalgo, will in all probability be accomplished with as much certainty and as soon, by means of the ordinary Indian policy of the United States as if that Article were to remain in operation. That policy has generally been successful. As the territories of the nomadic tribes have been narrowed by the advancing tide of civilization, the savages have been restrained by the military force which has preceded or accompanied the settlers, or by means of treaties stipulating peace, which the Indians have found it for their interest to observe. The same course will be pursued in respect to the Indians mentioned in our treaties with Mexico. The vastness of the regions over which they roam, may be an obstacle to its comparative success there, but if the white population shall spread over them with any thing like the rapidity with which it has occupied the Indian territory in other quarters of the Union, its ultimate triumph within a reasonable time will be sure.

It seems that the sum (left blank in the record copy) which Letcher was authorized by the foregoing instruction to agree to pay to Mexico was \$3,000,000; the correctness of this rests on the recollection, more than two and a half years later, of the Chief Clerk of the Department, William Hunter, Jr., who was Claims Clerk in 1851, that such was "the sum originally contemplated". Marcy wrote this on the point in his report of April 13, 1854, transmitted to the Senate with a presidential message of the same date (D.S., 7 Report Book, 79-80; see Executive Journal, IX, 298):

It appears from the record of the instructions to Mr Letcher, that, under date the 19<sup>th</sup> of August, 1851, he was directed to enter upon the negotiation of a convention with the Mexican government for the abrogation of the 11<sup>th</sup> Article of the Treaty of Guadalupe Hidalgo, but the sum which he was authorised to offer as a consideration therefor is not mentioned in the instruction. It was, however, at the date of this instruction, communicated to the present Chief Clerk of this Department, whose recollection of it is that three millions was the sum originally contemplated. This sum was, therefore, inserted in the blanks of the record when the copies called for by the Resolution of the 3<sup>rd</sup> January were transmitted to the Senate. The omission in the record was, probably, occasioned by the fact that Mr Letcher was himself the bearer of the letter to Mexico, and by the apprehension that, if it should be lost or stolen, information of the sum authorised to be offered might reach persons who had no right to receive it.

The instruction to Mr Letcher of the 27<sup>th</sup> of February, 1852, authorised him to offer an additional sum of one and even two millions in addition to that referred to in the instruction of the 19<sup>th</sup> of August, 1851.

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<sup>1</sup> For this draft, see Manning, *op. cit.*, IX, 91-92, footnote.

The whole amount which Mr Letcher was directed to offer is referred to, but, also, in blank, in the instruction to Mr Conkling of the 14<sup>th</sup> of October, 1852, which instruction he took with him on repairing to his post.

It is relevant to mention that during the negotiations of December 1853 the Mexican Minister of Foreign Affairs, Manuel Diez de Bonilla, said that Letcher "in 1852" had offered \$5,000,000 and that Alfred Conkling, successor of Letcher as Minister to Mexico, in June 1853 had offered \$8,000,000 for the abolition of Article 11 of the Treaty of Guadalupe Hidalgo (see the protocol of December 23, 1853, printed below under the heading "The Negotiations"). If the original sum was \$3,000,000, Letcher had authority by the instruction of February 27, 1852 (cited below), to offer \$5,000,000; but Conkling never had authority to offer \$8,000,000 unless the first figure was as much as \$6,000,000.

On February 27, 1852, Letcher was authorized to "offer one and even two millions in addition" to the \$3,000,000<sup>1</sup> of the previous instruction (Manning, *op. cit.*, IX, 111, signed by William S. Derrick, Acting Secretary). Nothing was accomplished under the instructions to Letcher; they were renewed by Acting Secretary of State Charles M. Conrad (Secretary of War and Acting Secretary of State during the last illness of Webster, who died on October 24, 1852; Conrad was Secretary of State *ad interim* from October 25 to November 5, 1852) to Letcher's successor, Alfred Conkling, except that "the claims of our citizens for wrongs done by Mexico" were not to be assumed by the United States but were "to be deducted from the amount" of \$5,000,000 (*ibid.*, 125, October 14, 1852). Conkling was as unsuccessful as Letcher had been; the Mexican Government continued to think of sums much larger than those proposed (see Conkling's despatch No. 47, of June 20, 1853, in *ibid.*, 591-93).

Another subject which was then of much import in the relations of the two countries was that of projected means of communication across the Isthmus of Tehuantepec. The first concession for the purpose of such communication was by a contract of March 2, 1842, between the Mexican Government and José de Garay, a Mexican citizen, pursuant to a decree of Santa Anna, then President of Mexico, dated March 1, 1842. This concession was known as the Garay Grant; its terms were extravagant and improvident, including title to unoccupied lands for ten Mexican leagues,<sup>2</sup> and right of settlement within fifty leagues, on each side of the line of communication; eighteen months were allowed for the preliminary survey (said to have been made), and construction was to begin within ten months thereafter (for a translation of the decree and grant, see Williams, *Isthmus of Tehuantepec*, 263-69). Two extensions of time for commencement of the work were granted, the first, of one year, and the

<sup>1</sup> It is assumed here that this is the correct amount.

<sup>2</sup> A Mexican league is somewhat less than three English miles. The extent of the land grant was calculated to be 4,860,000 acres (see Williams, *Isthmus of Tehuantepec*, 140). That work was copyrighted in 1852 by the Tehuantepec Railroad Company of New Orleans (not, it seems, incorporated), of which Judah P. Benjamin was chairman.

second, to November 5, 1848, by decree of General José Mariano de Salas of November 5, 1846 (see *ibid.*, 269-77). Pursuant to contracts of earlier date, Garay transferred his rights to Manning and Mackintosh, British subjects, on September 28, 1848 (for transfer papers, see Senate Executive Document No. 97, 32d Congress, 1st session, serial 621, pp. 163-77, hereinafter cited as "serial 621").

The ownership of the Garay Grant by Manning and Mackintosh was the reason given by the Mexican Plenipotentiaries for their refusal, during the negotiation of the Treaty of Guadalupe Hidalgo, to agree to Tehuantepec clauses in that treaty (see vol. 5, pp. 282-83); an article on Tehuantepec was among those of the American draft treaty given to Nicholas P. Trist, the negotiator for the United States (*ibid.*, 266-67); and the value put upon that article in the "maximums" of Trist's instructions was \$5,000,000 (*ibid.*, 262-64).<sup>1</sup>

On February 5, 1849, Manning and Mackintosh transferred the Garay Grant to Peter A. Hargous, of New York, an American citizen (see the transfer papers above cited); the rumored consideration was \$25,000 (Butler, Judah P. Benjamin, 124); a New Orleans group, under the leadership of Judah P. Benjamin, became associated with Hargous (see Benjamin to Webster, April 15, 1851, in serial 621, pp. 50-52; also the "card" or statement of Benjamin, "Chairman of the Tehuantepec Railroad Company", in Williams, *op. cit.*, 287-95, published in 1852); and on the surveys for a Tehuantepec railway which were carried on for this company from December 1850 to June 1851 under the direction of Major John G. Barnard, U.S.A., it is said that more than \$100,000 was expended (*ibid.*, 285-87, 291).

Under this American ownership the Garay Grant was strongly supported during the Taylor and Fillmore administrations by Secretaries of State Clayton and Webster. Pursuant to directions of the former, a convention of guaranty in aid of the Garay Grant was signed at Mexico City on June 22, 1850 (D.S., Unperfected I2; for the English version, see Manning, *op. cit.*, IX, 364-66, footnote; and for relevant instructions of Clayton from April 30, 1849, to April 23, 1850, see *ibid.*, 27-28, 37-41, 48, 51). That convention was not submitted to the Senate; Hargous desired changes in its text, which Webster sought, with small success, to obtain; a substitutional convention, differing but slightly from the convention of 1850, was signed at Mexico City on January 25, 1851 (D.S., Unperfected I2; for the English version, see serial 621, pp. 47-50; comparison of the 1850 and 1851 conventions is in Manning, *op. cit.*, IX, 379-80, footnote); that convention was submitted to the Senate and on March 7, 1851, received the advice and consent of that body (Executive Journal, VIII, 317); it was ratified by the United States on March 11, 1851, and the ratification was transmitted to Mexico City on the following May 5 (see Manning,

<sup>1</sup> Various authorities, official and unofficial, have made the erroneous statement that Trist was authorized to pay \$15,000,000 for the Tehuantepec clauses of his instructions (see Webster to Letcher, January 31, 1852, in Manning, *op. cit.*, IX, 109-10; Hunter to Burwell, March 22, 1852, in *ibid.*, 115-17); this mistake arises from reading those instructions only in part; and it was clearly pointed out by Secretary of State Cass on November 17, 1857 (*ibid.*, 246).

*op. cit.*, IX, 80, 116); but before the convention of 1851 was submitted to the Mexican Congress that Legislature had taken action which resulted in a decree of President Mariano Arista of May 22, 1851, declaring the Salas decree of November 5, 1846, null and void and thus invalidating the Garay Grant (for a translation of the decree, see *ibid.*, 397, footnote; and for relevant instructions and other papers of Webster, of Acting Secretary of State William S. Derrick, and of Acting Secretary of State John J. Crittenden, from August 17, 1850, to December 22, 1851, see *ibid.*, 57, 58-64, 65, 66-69, 71-88, 92-96, 98-99, 106-8; correspondence of that period between Webster and Hargous is printed in serial 621, pp. 24-44, *passim*, 67-74, 90-92, 98-100). A project substitutional for the 1851 convention was proposed by the Mexican Government on January 3, 1852 (for a translation of that project, see serial 621, pp. 120-24; the covering note is in Manning, *op. cit.*, IX, 447-52); it was not found acceptable (see *ibid.*, 485-86, April 2, 1852); and the convention of 1851 was almost unanimously rejected by the Mexican Chamber of Deputies on April 7, 1852<sup>1</sup> (*ibid.*, 490; the time limited for the exchange of ratifications had been prologued from January 25 to April 8, 1852; see *ibid.*, 462, and serial 621, pp. 114-15; for relevant instructions and other papers written in 1852 by Webster and by Acting Secretaries of State William S. Derrick and William Hunter, Jr., during Webster's tenure of office, see Manning, *op. cit.*, IX, 109-20; President Fillmore's letter to President Arista of March 19, 1852, is in serial 621, pp. 157-59).

Hargous then protested and, on June 5, 1852, for "himself and associates, the Tehuantepec company of N. Orleans", presented to the Department of State this claim of \$5,283,000 against the Government of Mexico<sup>2</sup> (*ibid.*, 148-50):

<sup>1</sup> President Arista wrote to Webster on June 2, 1851, that the "actual holder of the annulled privilege . . . can scarcely have spent a hundred thousand dollars in his undertaking" (Manning, *op. cit.*, IX, 395).

<sup>2</sup> Letcher reported that many American citizens had written letters to the Mexican Government advising the rejection of the treaty of January 25, 1851 (December 1, 1851; Manning, *op. cit.*, IX, 434-35); he then transmitted as a specimen a copy of a letter to President Arista from Jonas P. Levy, dated at Washington November 7, 1851 (for the letter and covering despatch of December 14, 1851, received January 28, 1852, see *ibid.*, 438-41). Under the Logan Act of January 30, 1799 (1 Statutes at Large, 613; a statute very rarely invoked), Levy was indicted in Washington, arrested in New York on January 31, 1852, and bailed for \$5,000 in Washington on February 3, 1852 (Charleston Courier, February 7, 1852, p. 2; February 9, 1852, p. 2); Webster sought to obtain the original of Levy's letter (Manning, *op. cit.*, IX, 109-10, January 31, 1852), which Arista refused to give up (*ibid.*, 486, April 4, 1852); accordingly the indictment was nolle (*ibid.*, 136, footnote).

In the issue of the Charleston Courier of February 9, 1852, p. 2, there is this account of Levy:

LEVY has resided in Mexico at various times for years past, and during the war with Mexico had the command of the U.S. transport ship *American* and assisted Gen. Scorr to land at Vera Cruz, indicating to him the place where he should land. He is the brother of Capt. LEVY, of the U.S. Navy. His interest in defeating the Tehuantepec treaty grows out of his possession of a grant to make a road from Alvarado Huaculco, which grant, as he states, he obtained from the Mexican Government a year or two ago. Others have used, for interested motives, their influence to defeat this treaty. Its ratification would be injurious to the prosecution of rival routes.

*Statement of the demand made against the government of the republic of Mexico by P. A. Hargous of New York, and his associates, the New Orleans company, for the loss occasioned by the confiscation of their property in the right of way across the Isthmus of Tehuantepec, and other franchises, as also certain lands granted in fee simple.*

Value of lands and franchises confiscated, according to articles of sale to New Orleans company.....	\$3, 500, 000 00
Expenses incurred by P. A. Hargous and by the company in surveying and developing the grant.....	280, 000 00
Loss occasioned by expulsion of engineers and agents, thereby requiring a repetition of work already provided for.....	100, 000 00
Loss of use of steamer United States purchased for the service of the survey, rendered useless by exclusion.....	35, 000 00
Duties exacted upon supplies for the engineering party shipped by the company per schooner Sears, and value of barges Almagres and Sarabia, seized by the Mexican authority in November, 1851.....	12, 000 00
Loss of services of said barges from November, 1851, until date, \$500 per month for each.....	6, 000 00
Loss of use of temporary road which the New Orleans company had determined to open immediately, and made arrangements accordingly in the commencement of 1851, say twelve months as per estimate given in the printed report of the company's survey.....	1, 350, 000 00
	5, 283, 000 00

P. A. HARGOUS,

*For himself and associates, the Tehuantepec company of N. Orleans.*

WASHINGTON, May 1, 1852.

Mexican legislation looking toward a contract for communication across the Isthmus of Tehuantepec was enacted on May 14, 1852 (see Manning, *op. cit.*, IX, 501; a translation of the text of the act is in Senate Executive Document No. 72, 35th Congress, 1st session, serial 930, pp. 5-6; that document is hereinafter cited as "serial 930"). Papers were requested by the Senate of the United States by resolution of July 19 and were transmitted by President Fillmore on July 27 (serial 621); the Committee on Foreign Relations made a report recommending resolutions of a rather vigorous tenor (Senate Report No. 355, 32d Congress, 1st session, serial 631); but this was on August 30, 1852, the day before the session ended; the Senate took no action, then or later. In the instruction of Acting Secretary of State Conrad of October 14, 1852, it was recognized that there might be clauses in the Garay Grant "particularly obnoxious to the Mexican government or people" and "real objections to the grant" (see Manning, *op. cit.*, IX, 121-23; and for two notes of Secretary of State Everett, of December 31, 1852, and January 31, 1853, see *ibid.*, 127-28).

Before the United States and Mexican Claims Commission under the convention of July 4, 1868, Levy had two claims (which were dismissed), respectively for \$116,919.41 and \$5,000,000. The larger claim was for violation of his grant for constructing a road (Senate Executive Document No. 31, 44th Congress, 2d session, serial 1720, p. 18, No. 6, and p. 64, No. 967; that document is hereinafter cited as "serial 1720").

On February 5, 1853, another Tehuantepec concession, of much more reasonable terms than the Garay Grant, was made by the Mexican Government to the "mixed company" of Albert G. Sloo<sup>1</sup> and associates. Sloo, a citizen of the United States, was represented in the making of the contract at Mexico City by William D. Lee.<sup>2</sup> A convention between the United States and Mexico in aid of the Sloo Grant<sup>3</sup> (to which a copy of the grant was annexed) was signed at Mexico City on March 21, 1853 (D.S., Unperfected J2; the English version of the convention and a translation of the Sloo Grant are printed in Manning, *op. cit.*, IX, 540-46, footnote; translations of the grant and decree of the same date are in serial 930, pp. 20-26); that convention was signed on behalf of the United States by Alfred Conkling, Minister to Mexico, without full powers or instructions in the premises; and while the convention was ratified by Mexico on March 29, 1853 (see D.S., 16 Despatches, Mexico, No. 29, March 29, 1853, enclosure); it was not approved by President Pierce, and it was not submitted to the Senate for action thereon; the copy communicated to that body on February 16, 1854, was for information (Executive Journal, IX, 247, 265-66; Senate Confidential Executive Document No. 17, 33d Congress, 1st session, 34 Regular Confidential Documents, 273-87).

There was thus in 1853 conflict in respect of Tehuantepec concessions between American private interests, the claimants under the Garay Grant and those interested in the Sloo Grant (see Hargous to Marcy, May 7, 1853, in serial 930, pp. 29-31).

Under the Sloo Grant the sum of \$600,000 was to be deposited with the Mexican Government, \$300,000 immediately and the balance in monthly instalments of \$50,000. In order to meet those payments an agreement was entered into on February 7 and 10, 1853, with the approval of the Mexican Government, "under which Francisco de Palezieux Falconnet a British subject resident in Mexico, was to advance the above sum of \$600,000 to the Mexican Treasury and accept Bill of Exchange payable to his order for the same drawn by William D. Lee on the house of A. G. Sloo of New

<sup>1</sup> Pronounced as "slow" according to Thomas H. Benton (see Congressional Globe, 33d Congress, 1st session, appendix, p. 1035, col. 3, June 26, 1854).

<sup>2</sup> Lee was a Texan and had held office in the Republic of Texas (see vol. 4, p. 733); nothing has been found in the records of the Department of State or in those of the Embassy at Mexico City indicating that Lee had official status under this Government at any time; but Alfred Conkling, Minister to Mexico, wrote that upon his arrival at his post (November 5, 1852; D.S., 16 Despatches, Mexico, No. 1, November 23, 1852) he found Lee "attached to the Legation, and acting also as the agent and Attorney of Mr Sloo"; and the "strong and decided convictions" of Lee "in no slight degree influenced" Conkling "in finally resolving to sign the Convention [of March 21, 1853] at once" (see Conkling's despatch No. 26, of March 24, 1853, in Manning, *op. cit.*, IX, 547).

<sup>3</sup> In an eighteen-page pamphlet issued for the Hargous interests (no title page and no date, but published not earlier than November 1856, and probably little later) it is said that there were six secret articles assented to by the parties to the Sloo Grant when it was signed (see "Memoir on the Subject of the concession of the Mexican Government to Don Jose de Garay . . .", in D.S., Papers Chiefly Relative to Claims, folder 68, Don José de Garay, transferred to The National Archives on inventory 137, item 26).

Orleans. In case of failure of payment for whatever causes the grant or concession from the Mexican Government was pledged and mortgaged for this sum to M<sup>r</sup> Falconnet, with power for him to proceed in a summary and extrajudicial manner and sell the concession "to the highest bidder who may offer without any judicial formality, or to adjudicate it to himself if he chooses without these appearers or their representatives having any right of opposition or making any reclamation, since now in anticipation of the case, they confer upon him the most full irrevocable and efficacious power that can be required in law, with all the amplitude that may be legally sufficient' &c. &c." (instruction of Secretary of State Cass to John Forsyth, Minister to Mexico, July 17, 1857; D.S., 17 Instructions, Mexico, 122-49, 161-64; printed in Manning, *op. cit.*, IX, 223-34). The bills drawn on Sloo were not paid (*ibid.*; and see Conkling's despatch No. 38, of May 14, 1853, in *ibid.*, 574-75); and on June 2, 1853, Falconnet requested the Mexican Government to acknowledge him as the rightful owner of the concession. Notwithstanding the default of Sloo, he and his associates, on June 21, 1853, under a law of 1852, formed a Louisiana corporation, named the Tehuantepec Company, for the promotion of the Sloo Grant (see the cited instruction of Cass).

In May and again in September 1853 the British Minister at Washington, John F. Crampton, inquired of Marcy regarding "the course which the American Government proposes to adopt respecting the projected Interocceanic Communication by way of the Isthmus of Tehuantepec"; and in his confidential despatch No. 152, of September 5, 1853, Crampton thus reported a conversation with the Secretary of State on the subject (Library of Congress, facsimiles from the Public Record Office, London, Foreign Office Records, vol. 5:566, excerpt):

M<sup>r</sup> Marcy said that the subject continued to be, as it was when he before spoke to me upon it, one of very great embarrassment to the United States Government. He added however, that I might apprise your Lordship confidentially that it was *not* the intention of the American Government to submit to Congress the Convention signed by Judge Conkling with the Mexican Government, in regard to what is commonly called the Sloo Contract. "I will", continued M<sup>r</sup> Marcy, "tell you frankly how the matter stands at present, but as a 'good deal depends upon the position which I have taken in it personally, I 'must beg of you to consider what I say as strictly confidential.'"

"You are aware that another grant for this route exists, called the 'Garay Grant', once in the hands of some of your own people, now in the hands of 'Americans. The validity of this grant is maintained by its present holders, 'but unanimously denied by the Mexican Government and Congress. The 'holders of the Grant have, however, brought a good deal of interest to bear on 'the Government of the United States' (M<sup>r</sup> Marcy here alluded by name to 'some individuals of influence): they have as you know got a resolution through 'the Senate in favour of their claim, they have already obtained great support 'from the Executive and particularly from M<sup>r</sup> Webster, and the Government is 'in fact pretty far committed on their side—so much so that if we were now to 'abandon them and submit the rival Contract to the Senate, they might with 'some show of justice turn round, and sue us for an indemnity for the losses they 'had sustained.'"

"Is it then", I asked M<sup>r</sup> Marcy, "the intention of the American Government 'to insist on the recognition of the 'Garay Grant' by the Mexican Government?" He replied "No, at least I for one will never consent to do so. The 'Garay

"Grant' has fallen into the hands of Speculators; I don't like to mention names "or enter into particulars, but in general I may say I am not satisfied with the "correctness of its proceedings. On the other hand, the Mexican Government "has repudiated it in every possible way—by their tribunals, by their President, "by their Congress,—in fact by every legal and constitutional means in their "power. It is true", he added, and in this we should be borne out by the prin- "ciple so ably laid down by Lord Palmerston in the Greek Affair,<sup>1</sup> if we thought "the decision manifestly unjust, (and perhaps it is unjust,) we would be justified "in appealing against it—but the appeal would be, War—and my opinion of "the 'Garay Grant' is not such as to allow me to concur in the propriety of such "a step."

I asked Mr. Marcy whether there was any prospect, as I had seen reported, of a union of the interests under the Garay and Sloo Contracts by an arrangement between the holders. He replied that he did not know, but that such an arrange- ment might not be impossible, if the holders of the 'Garay Grant' could establish a claim to an indemnity from the United States Government, which now seemed to be their object.

In conclusion it would seem that the action of the United States Government in this matter is likely to be suspended for some time to come.

Some of the later history of the two grants is narrated in the instruc- tion last mentioned (see also serial 930, pp. 33–36, 37–39). Falconnet, on April 16, 1855, "with a view of recovering his money . . . made a legal cession of his privilege" to Hargous; on November 26, 1855, the Mexican Government acknowledged Falconnet as "holder"<sup>2</sup> of the Sloo Grant, but did not recognize the cession thereof to Hargous; Falconnet, therefore, not having recovered any part of his advances of \$600,000, claimed to be the owner of the Sloo Grant. In 1857 the Tehuantepec Company, Hargous (holder of whatever rights existed under the Garay Grant), and Falconnet united their interests in a new company, the Louisiana Tehuantepec Company, incorporated in Louisiana on July 30, 1857, under an act of March 14, 1855; that com- pany thus acquired all the outstanding claims and interests in the Garay and Sloo Grants except the individual rights, if any, of Sloo himself, who was engaged in litigation with the Tehuantepec Com- pany (for some of the details of the joinder, see Manning, *op. cit.*, IX, 229–30).<sup>3</sup>

<sup>1</sup> The case of Pacifico (see Moore, Digest, VI, 852–53; VII, 132–33).

<sup>2</sup> Not as owner, but only as holder, it seems; the distinction is pointed out in the opinion of Commissioner William Henry Wadsworth in D.S., 3 United States–Mexico Claims Commission, 1868, Opinions, 346–47, No. 57.

<sup>3</sup> In the archives of the Department of State is a tin box containing papers of Judah P. Benjamin which were seized by General Benjamin F. Butler during the Civil War. Among the papers are a number of bonds of the Louisiana Tehuantepec Company: 42 of \$1,000 each, 29 of which are dated September 20, 1857, and 13 dated August 1, 1858; and 125 of \$100 each, dated August 1, 1858. All were payable in ten years with interest at 8 percent; from all the bonds of September 20, 1857, the first three coupons have been clipped; and from all those of August 1, 1858 (except one that lacks the first seven coupons), the first coupon has been clipped. Also in the box are three stock certificates of the company for 941 shares belonging to Benjamin. Among other papers are some showing the joinder of the Hargous and Falconnet interests:

(a) A resolution of the company of July 30, 1857, to the effect that Hargous was jointly interested with the company in the result of negotiations which the president of the company and Benjamin were authorized to conduct with the Mexican Government in respect of the lands embraced in the Garay Grant.

(b) A letter to Benjamin dated at Mexico City October 16, 1857, from Fal-



With official support from the Buchanan administration, two representatives of the Louisiana Tehuantepec Company, its president, Emile La Sère, and Judah P. Benjamin, then Senator from Louisiana, proceeded to Mexico City and there obtained from the Mexican Government a new and substitutionary concession, of September 7, 1857,<sup>1</sup> the Sloo Grant being annulled.<sup>2</sup>

The grant of 1857 was by no means the end of the Tehuantepec question, and it was not the last Tehuantepec grant (see The Tehuantepec Railway, Its Location, Features, and Advantages under the La Sère Grant of 1869); but the grant of 1857 was the end of all claims directly arising from the Garay<sup>3</sup> and Sloo Grants except that of Sloo individually. Sloo died in 1863; his widow presented to the Commission under the convention with Mexico of July 4, 1868, a claim for \$21,900,000 (or alternatively, with enforcement of the Sloo Grant, for \$11,900,000); the claim was dismissed (D.S., 1 United States-Mexico Claims Commission, 1868, No. 57; 3 *ibid.*, Opinions, 346-48, No. 57).

Filibustering expeditions and raids of American adventurers were another serious obstacle to good relations between the United States and Mexico (see Rippey, 85-105, and authorities there cited); the actual accomplishments of the invaders were small; the effects on sentiment were great. The incursion of William Walker into Lower California in November 1853 took place during the treaty negotiation of Gadsden at Mexico City; Gadsden is said to have thought that further negotiation would probably have resulted in the cession of Lower California "had not the insane expedition of WALKER caused SANTA ANNA to set his face resolutely against it" (see the editorial

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connet, Manuel Escandon, Francisco Iturbe, and J. B. Jecker & Company, authorizing the former to recover bonds of the company for \$900,000 and deliver them to the agents of the writers, less a commission of 5 percent.

(c) Receipts, dated September 16, 1858, for some \$860,000 in bonds delivered by Benjamin to the agents of the four named.

(d) Settlement of September 11, 1858, between the company and the three last named of those four.

(e) Receipt to those three dated September 13, 1858, for \$60,000 in interest coupons in payment of instalments of subscriptions for shares.

(f) Receipts to Hargous (\$2,000) and Benjamin (\$500) for instalment payments on subscriptions to shares.

<sup>1</sup> The circumstances of the negotiation of Benjamin and La Sère were extraordinary; they quarreled bitterly with the American Minister, John Forsyth, and were opposed at Mexico City by Pierre Soulé, who represented Sloo (see Manning, *op. cit.*, IX, 238-42, 929-36, 947-59).

For translations of the concession of September 7, 1857, and of the decree of September 3, 1857, annulling the Sloo Grant, see serial 930, pp. 54-59.

<sup>2</sup> Forsyth thought that the annulment of the Sloo Grant would support an argument for the obsolescence of Article 8 of the Gadsden Treaty, which was based on that grant (see Manning, *op. cit.*, IX, 934-35).

<sup>3</sup> The Hargous claim for \$5,283,000 was, in a sense, before the Commission under the 1868 convention; but there was "no Memorial, no proof, in short nothing which can constitute a formal claim"; the file was said to be "one of the packages of papers sent by the Secretary of State" pursuant to his circular of February 23, 1870, which is printed in Moore, *International Arbitrations*, II, 1312-13; and the only order made was to consolidate the file with No. 57 (see the opinion of Commissioner Manuel María de Zamacona in D.S., 3 United States-Mexico Claims Commission, 1868, Opinions, 154, No. 2).

account of an interview with Gadsden in the Charleston Courier, January 21, 1854, p. 2; also *ibid.*, January 25, 1854, p. 1).

From the Indian problem arose claims of Mexico and Mexican citizens against the United States based on Article 11 of the Treaty of Guadalupe Hidalgo; as presented to the Commission under the convention between the United States and Mexico of July 4, 1868, the amount thereof was over \$31,800,000; whether such claims (if not harred by the Gadsden Treaty) had legal validity, and if so in what sum, was never adjudicated; the decision of the Umpire of the Commission under the 1868 convention was to the effect that by the wording of Article 2 of the Gadsden Treaty all claims under Article 11 of the Treaty of Guadalupe Hidalgo had been released (see Moore, *International Arbitrations*, III, 2430-47).

There were American claims against Mexico; some of those alleged were unfounded, and others were stated at exaggerated amounts by the claimers; very few of the claims had been critically examined, so that their real worth and importance as a whole were overestimated; the demand of those interested in the Garay Grant for \$5,283,000 has been mentioned.

#### SENATE PROCEEDINGS AND AMENDMENTS

In accordance with amendments proposed in the first instance by the Senate of the United States, the terms of the Gadsden Treaty were radically altered after signature.

Articles 1 (in part), 2, 3, 4, and 8 of the treaty as signed by the Plenipotentiaries read thus:

##### ARTICLE 1<sup>st</sup>

The Mexican Republic agrees to designate the following as her true limits with the United States for the future, Retaining the same dividing line between the two California's, as already defined and established according to the 5<sup>th</sup> Article of the Treaty of Guadalupe Hidalgo, the limits between the Two Republics shall <sup>1</sup> proceed from the point where the aforesaid line intersects the River Colorado, along the middle of the deepest channel of this river, to a point distant two marine leagues to the North of the most Northern part of the Gulf of California, thence in succession a right line to the intersection of the 31<sup>st</sup> Parallel of Latitude North with 111° Longitude West of Greenwich Whence another right line to the 31°47'30" of North

##### ARTÍCULO 1º

La República Mexicana conviene en señalar para lo sucesivo como verdaderos límites con los Estados Unidos, los siguientes: Subsistiendo la misma línea divisoria entre las dos Californias, tal cual está ya definida y marcada conforme al artículo quinto del Tratado de Guadalupe Hidalgo, los límites entre las dos Repúblicas <sup>2</sup> seguirán, desde el punto en que la expresada línea corta el Río Colorado, por medio del Canal mas profundo de este Río, hasta un punto distante dos leguas marinas al Norte de la parte mas boreal del Golfo de Californias; en seguida una línea recta hasta la interseccion del paralelo de 31° latitud Norte con el Meridiano 111° de longitud Oeste de Greenwich: despues otra recta hasta encontrar el Río Grande ó Bravo del Norte á la

<sup>1</sup> By the Senate amendment to this article the remainder of this paragraph was stricken and new matter substituted.

<sup>2</sup> The effect of the Senate amendment to this article was to delete from this point to and including "aquella laguna" and to insert new matter; and while that amendment did not require any change in the Spanish up to this point, for "marcada" is "establecida" in the Mexican instrument of ratification.

Latitude where the same will cross the Boundary Line descending the Rio Grande or Bravo del Norte to the Gulf of Mexico, as defined in the 5<sup>th</sup> Article of the Treaty of Guadalupe—And it is agreed, that; should the line before described, (from the intersection of the parallel 31° of Latitude North with the Meridian 111° West of Greenwich to its crossing the Rio Grande in latitude 31°47'30") traverse the lake Guzman,<sup>1</sup> said line shall be broken so as to form an angle at a point distant one marine league South of the most Southern part of that lake

For the performance of this portion. . . .

#### ARTICLE IIP

With the like desire to maintain the most perfect peace and friendly relations between both Countries, it has been agreed that to remove all occasion of dispute on account of reclamations to the present date founded on alleged Indian incursions, and to avoid all contests upon the true spirit and intention of the obligation stipulated in the 11<sup>th</sup> article of the Treaty of Guadalupe; the same has been and is hereby abolished and annulled—The Government of the United States agrees, notwithstanding this abrogation and annulment, to provide such additional laws, and regulations as the subject may in good faith require, making it a highly penal offence on the part of any inhabitant of the United States, or the territories thereof, to purchase or receive horses, mules, cattle, or property of any kind, knowing the same to have been stolen within the limits of Mexican territory by Indians, or by any other persons—And furthermore agrees to return on demand to their legitimate owners what may have been thus stolen, so soon as the same shall have been recovered by the Authorities of the United States—And in the event of any person or persons captured upon Mexican territory, being carried within the boundaries of the United States, the Government of the latter engages to use every fair and reasonable means that the nature and circumstances of the case will admit, to rescue and return such captives to their own country, or deliver them to an agent or representative of the Mexican Government

latitud de 31°47'30", desde donde continuarán dichos límites descendiendo el Rio Grande ó Bravo del Norte, hasta el Golfo de México, cual se definiéron en el artículo quinto del Tratado de Guadalupe.

Y se conviene en que, si atravesase la laguna Guzman la línea descrita ántes<sup>1</sup> (desde la interseccion del paralelo de 31° de latitud Norte con el meridiano 111° Oeste de Greenwich hasta cortar el Rio Grande á la latitud de 31°47'30".) dicha línea se descompondrá en dos que concurren formando ángulo en un punto distante una legua marina al Sur de la parte mas austral de aquella laguna. Para la egecucion de esta parte. . . .

#### ARTÍCULO 2º

Con el mismo deseo de mantener la mas perfecta paz y buenas relaciones entre ambos Países, se hán convenido, que para remover toda ocasion de disputa con motivo de las reclamaciones fundadas hasta la fecha en alegadas incursiones de los Indios, y para evitar toda contienda sobre el verdadero espíritu é intencion de la obligacion estipulada en el artículo undécimo del Tratado de Guadalupe, este há sido, y queda por el presente derogado y anulado.

No obstante esta derogacion y anulacion, el Gobierno de los Estados Unidos conviene en espedir las leyes y reglamentos adicionales que el asunto de buena fé requiera, constituyendo en delito altamente penal por parte de cualquier habitante de los Estados Unidos ó de sus territorios, el comprar ó recibir caballos, mulas, ganado, ó efectos de cualquier especie, sabiendo que los mismos hán sido robados dentro de los límites de territorio Mexicano, por Indios ó por cualesquiera otras personas: Y ademas, dicho Gobierno conviene en devolver á sus legítimos dueños, cuando lo demandaren, lo que de ese modo haya sido robado, despues de haber sido recobrado por las autoridades de los Estados Unidos.

Y en caso de que cualquiera persona ó personas cautivadas en territorio Mexicano fueren llevadas dentro de los límites del de los Estados Unidos, el Gobierno de los mismos se compromete á emplear todos los medios justos y racionales que la naturaleza y

<sup>1</sup> The line described does not traverse Lake Guzman.

requiring simply the repayment to the officer or agent of the United States, who may so deliver or return them, the expenses incurred in the maintenance and transmission of the rescued captives—Finally the Government of the United States promises that on any occasion, she may have to remove the Indians from any point of her Territory or to settle thereupon her own Citizens, especial care shall be taken, not to place said Indians under necessity of seeking new homes by means of incursions into the Mexican Territory

#### ARTICLE III<sup>P</sup>

In consideration of the Grants received by the United States and the obligations relinquished by the Mexican Republic pursuant to this Treaty The former agree to pay to the latter, the sum of Fifteen Millions of Dollars in gold or silver coin at the Treasury at Washington, one fifth of the amount on the exchange of ratifications of present Treaty at Washington, and the remaining four fifths in monthly instalments of Three Millions each, with interest at the rate of six per cent per annum, until the whole be paid, the Government of the United States reserving the right to pay up the whole sum of 15 millions at earlier date as may be to her convenient

The United States also agree to assume all the claims of their Citizens of whatsoever right title or foundation which may have arisen since the date of the signature of the Treaty of Guadalupe or which may not have been provided for therein or of any Corporation, Company, or Citizen of the same including the claim of the so called concession to Garay whose lawful existence Mexico does not recognize, even as implied; thus extinguishing this, among the other claims of Citizens of the United States against the Republic of Mexico, Said United States obliging themselves not to make any payment on account of the so called Concession to Garay, without having previously delivered to the Agent of the Mexican Government accredited at

circunstancias del caso admitan, para rescatar y devolver tales cautivos á su propio Pais, ó para entregarlos á un Agente ó Representante del Gobierno Mexicano, exigiendo simplemente que se reembolsen al funcionario ó Agente de los Estados Unidos, que de ese modo los entregue ó devuelva, los gastos erogados en la traslacion y manutencion de los dichos cautivos rescatados.

Finalmente, el Gobierno de los Estados Unidos promete que siempre que tenga que desalojar á los Indios de cualquier punto de su territorio, ó que establecer en él á Ciudadanos suyos, cuidará muy especialmente de no poner á dichos Indios en la necesidad de buscar nuevos hogares por medio de incursiones sobre el territorio Mexicano.

#### ARTÍCULO 3<sup>o</sup>

En atencion á las concesiones que reciben los Estados Unidos, y á las obligaciones que abandona la República Mexicana en virtud de este Tratado, Aquellos convienen en pagar á Esta, la suma de quince millones de pesos, en moneda de oro ó plata, en la Tesorería en Washington; una quinta parte de esa cantidad al cangearse las ratificaciones del presente Tratado en la expresada Ciudad de Washington, y las cuatro quintas partes restantes en abonos mensuales de tres millones de pesos cada uno de ellos, con interes á razon de seis por ciento al año hasta el pago total; reservandose el Gobierno de los Estados Unidos el derecho de pagar la suma íntegra de quince millones de pesos en fecha anterior, segun le sea conveniente.

Los Estados Unidos convienen tambien en tomar sobre sí todas las reclamaciones de sus Ciudadanos, cualquiera que sea el derecho, título ó fundamento de que procedan, desde la fecha de la firma del Tratado de Guadalupe, ó á que no se haya provisto en él, ó de cualquier Corporacion, Compañía, ó Ciudadano de los mismos Estados, inclusa la reclamacion de la llamada Concesion de Garay, cuya legal subsistencia México no reconoce ni aún implícitamente; extinguiendo así esta reclamacion entre las demás de Ciudadanos de los Estados Unidos contra la República de México; obligandose dichos Estados Unidos á no hacer pago alguno por cuenta de la llamada Concesion de Garay, sin haber previamente entregado al Agente del Gobierno Mexicano

Washington, all the evidence and documents used by the holders of said Concession in establishing their rights and claims legally relinquished in favor of Mexico by such holders and Claimants, and it is agreed in the reciprocal release of obligations that the Mexican Republic exonerates the United States of America from all claims of Mexico or Mexican Citizens which may have arisen since the date of the Treaty of Guadalupe. So that each Government in the most formal and effective manner shall be exempted and exonerated of all obligations to each other respectively whether of themselves or in behalf of their respective Citizens up to the date of the signature of the Present Treaty

ARTICLE IV<sup>th</sup>

The Government of the United States shall organize a Board of Commissioners which shall meet in the City of Washington or of Mexico as the President of the United States may direct within one year from the date of the exchange of the ratifications of this Treaty, for the purpose of examining and deciding the claims assumed by the United States in the preceding Article, according to the principles of Justice, the law of Nations, and the Treaty in force between the Two Governments, and whose awards shall be final and conclusive; and the United States exonerating Mexico from all demands on account of the claims of their Citizens mentioned in the preceding article, and considering them entirely and forever cancelled, whatever their amount, undertake to make satisfaction for the same, in a sum not exceeding Five Millions of Dollars and if for the purpose of discharging their duties the Board of Commissioners should meet in the Capital of the Mexican Republic, the Government of the same will afford all necessary protection for the continued pacific exercise of its functions, and will extend every facility in the furnishing to the Commissioners and claimants all such documents establishing their rights, as they might require and which may be within the extent of its reach to supply

acreditado en Washington, todas las pruebas y documentos que empleen los tenedores de dicha Concesion para establecer sus derechos y accion, legalmente renunciada á favor de México por dichos tenedores y reclamantes. Y en el reciproco descargo de obligaciones, se conviene que la República de México exonera á los Estados Unidos de América de todas las reclamaciones de México y de sus Ciudadanos, que hayan podido originarse desde la fecha del Tratado de Guadalupe; de modo que cada Gobierno queda exento y exonerado de la manera mas formal y efectiva, de toda obligacion hácia el otro respectivamente, tanto para con él mismo como para con sus respectivos Ciudadanos, hasta la fecha de la firma del presente Tratado.

## ARTÍCULO 4º

El Gobierno de los Estados Unidos organizará una junta de Comisionados que se reunirá en la Ciudad de Washington ó en la de México, segun lo dispusiere el Presidente de los mismos Estados, dentro de un año contado desde la fecha del cange de las ratificaciones de este Tratado, con el fin de examinar y decidir las reclamaciones que los Estados Unidos toman sobre sí por el artículo precedente, de conformidad con los principios de justicia, el Derecho de gentes, y el Tratado en vigor entre los dos Gobiernos; y sus fallos serán finales y concluyentes; y los Estados Unidos, exonerando á México de toda demanda por cuenta de las reclamaciones de sus Ciudadanos mencionadas en el artículo anterior, y considerandolas chanceladas enteramente y para siempre cualquiera que fuere su monto, se obligan á satisfacerlas en una suma que no exceda de cinco millones de pesos. Y si con el fin de llenar sus deberes la Junta de Comisionados se reuniere en la Capital de la República Mexicana, el Gobierno de la misma le dispensará toda la proteccion necesaria para el continuo y pacifico egercicio de sus funciones, y le proporcionará cuantas facilidades pudiere ministrando á los Comisionados y reclamantes todos los documentos que para acreditar sus derechos pidieren, y que esté á su alcance proporcionar.

ARTICLE VIII<sup>14</sup>

The two high Contracting Powers fully impressed that under the auspices of peace, and upon the basis of mutual good faith and of the respect which Nations reciprocally owe, it is that their prosperity and well being increase, especially when from vicinity their interests grow to be mingled and identified, And recognizing the reciprocal obligations of Civilized Governments and the acknowledged provisions of the laws of Nations, agree by the Present in proof of that entire confidence which they mutually entertain and of that friendship which they desire to be as perfect, unalterable and complete as possible, that whenever the tranquility and interior repose of either country shall be threatened or disturbed by unlawful invasions of any of the citizens or subjects of either Power against the Territory of the other respectively; they will cheerfully cooperate in their endeavors to suppress all such attempts—They mutually and especially obligate themselves in all cases of such Lawless enterprizes which may not have been prevented through the Civil Authorities before formation, to aid with the Naval and Military forces, on due notice being given by the aggrieved Party of the aggressions of the Citizens and Subjects of the other, so that the Lawless Adventurers may be pursued and overtaken on the High Seas, their elements of War destroyed and the deluded Captives held responsible in their persons, and meet with the merited retribution inflicted by the laws of Nations against all such disturbers of the peace and happiness of contiguous and friendly Powers—It being understood that in all cases of successful pursuit and capture, the delinquents so captured shall be Judged and punished by the Government of that nation to which the vessel capturing them may belong conformably to the laws of each Nation

## ARTÍCULO 8º

Las dos Altas Partes Contratantes convencidas plenamente de que bajo los auspicios de la paz, y sobre la base de la buena fé mútua y del respeto que se deben recíprocamente las Naciones, es como pueden acrecentar su dicha y bienestar, especialmente cuando sus intereses por la vecindad se confunden y vienen á identificarse, y penetradas además de las obligaciones recíprocas de los Gobiernos civilizados y de las reconocidas disposiciones del Derecho de gentes, se convienen por el presente, en prueba de la plena confianza que se dispensan, y de la buena amistad que quieren sea la mas perfecta, inalterable y cumplida posible, que siempre que la tranquilidad y reposo interior de cada País fueren amagados ó alterados por invaciones ilegales de cualesquiera de los Ciudadanos ó súbditos de cada Potencia contra el territorio de una ú otra respectivamente, con gusto cooperarán en sus esfuerzos para reprimir todos esos atentados; y mútua y especialmente se obligan en todos los casos en que esas ilegales empresas no hayan podido evitarse ántes de su formacion por las Autoridades civiles, á auxiliar con fuerzas navales y militares dado que sea aviso por la parte agredida, de las agresiones de los Ciudadanos de la otra, para que los criminales aventureros sean perseguidos y aprehendidos en alta mar, sus elementos de guerra destruidos, y los extraviados aprehendidos hechos responsables en sus personas, y reciban el condigno castigo impuesto por la Ley de las naciones contra semejantes perturbadores de la paz y bienestar de Potencias contiguas y amigas; quedando entendido que en todos los casos de fructuosa persecucion y aprehension, los delincuentes de ese modo apresados, serán juzgados y castigados por el Gobierno de la Nacion á que pertenezca el buque aprehensor, de conformidad con las leyes de cada una de las dos Naciones respectivamente.

In the signed treaty there were ten articles; by the amendments proposed by the Senate (and accepted first by President Pierce and then by the Mexican Government) Articles 1 (in part; the boundary definition) and 2 were recast; for Articles 3 and 4 was substituted Article 3 of the final text; Article 8 was deleted; Articles 5, 6, 7, and 9 were renumbered as 4, 5, 6, and 7 respectively; the last word of Article 7 (Article 9 of the signed treaty) was corrected from "reaffixed" to "re-affirmed"; a new Article 8 was written; Article 10 became

Article 9, with the period for the exchange of ratifications enlarged from four months to six; and in the final sentence the year of independence of the United States was properly stated as "seventy eighth" in lieu of "Seventy Seventh".

It seems that the treaty was delivered to Pierce by Christopher L. Ward<sup>1</sup> (as to whom, see below under the heading "The Negotiations") on January 19 (New York Herald, January 20, 1854, p. 1); not until February 10 was it sent to the Senate with the presidential message of that date (Executive Journal, IX, 238-39); therein four amendments<sup>2</sup> were recommended, as follows:

1. To add to Article 2:

And the Government of Mexico agrees that the stipulations contained in this article to be performed by the United States shall be reciprocal, and Mexico shall be under like obligations to the United States and the citizens thereof as those herein above imposed on the latter in favor of the Republic of Mexico and Mexican citizens.

2. To recast the second paragraph of Article 3 to read thus:

The United States also agree to assume all the claims of their citizens against the Mexican Republic which may have arisen under treaty or the law of nations since the date of the signature of the treaty of Guadalupe. And the Mexican Republic agrees to exonerate the United States of America from all claims of Mexico or Mexican citizens which may have arisen under treaty or the law of nations since the date of the treaty of Guadalupe, so that each Government in the most formal and effective manner shall be exempted and exonerated of all such obligations to each other respectively.

The chief aim of this amendment was to omit claims arising on contract (notably the Garay Grant) from those assumed by the United States; the limitation to claims "under treaty or the law of nations" was deemed to exclude contract claims (see the report of Marcy of March 29, 1854, printed below).

3. To strike from Article 8 all after the word "attempts".

4. To substitute "seventy-eighth" for "seventy-seventh" in the final phrase.

No accompanying papers were sent in with the treaty; there was the usual reference to committee<sup>3</sup> and order to print (Executive

<sup>1</sup> Gadsden and Ward left Mexico City for New Orleans via Veracruz on January 4; from New Orleans they traveled together by rail as far as Branchville, South Carolina, where the treaty was entrusted to Ward; thence Gadsden went on to Charleston and Ward to Washington (see Gadsden's letter of January 12, 1854, from New Orleans, quoted below under the heading "The Negotiations").

<sup>2</sup> With a private note of January 31, 1854, Marcy sent to Almonte a draft (which is not available) "of the amendments which are prepared to the Treaty lately negotiated by General Gadsden", adding in a postscript that it might be necessary "to qualify the term 'claims' in such a manner as not to have it extended to ordinary transactions or to debts on contract about which there could not be any government interference" (Library of Congress, 47 Marcy Papers, 43419).

<sup>3</sup> The Senate Committee on Foreign Relations was composed of Senators James M. Mason, of Virginia (Chairman); John Slidell, of Louisiana; John M. Clayton, of Delaware; Stephen A. Douglas, of Illinois; John B. Weller, of California; and Edward Everett, of Massachusetts.

Journal, IX, 239-40); the subsequent proceedings in the Senate were complex and somewhat prolonged.<sup>1</sup>

Almost immediately after the date of the presidential message, its text and the terms of the treaty were published in the press;<sup>2</sup> a senatorial investigation of the leak proved fruitless (see *ibid.*, 246-47, 249, 260, 271-73).<sup>3</sup>

On March 9 the treaty was reported from the Committee on Foreign Relations (*ibid.*, 260-62); in its recommendations the committee retained the wording of the presidential suggestions, but proposed specifically to include among the claims assumed, that based on the Garay Grant, by writing these words after the first sentence of the second paragraph of Article 3 as proposed by Pierce:

Including any just and proper indemnity to the holders of the so-called concession to Garay (being citizens of the United States) the character of which is known to the correspondence between the two Governments, but not to include compensation for any loss of anticipated profits.

Other amendments put forward by the committee, apart from drafting changes and a clarification of the final clause of Article 4, were these: (1) to add to the boundary definition this proviso:

Provided, That "the most northern part of the Gulf of California" mentioned in this article shall be indicated by a parallel of latitude to be drawn at the distance of one marine league south of the most southern point of the island called "Montague Island", as the same is laid down on the chart<sup>4</sup> of "the reconnaissance of the Colorado River," by George H. Derby, lieutenant United States Topographical Engineers, December, 1850, which chart, attested by the signature of the Secretary of State of the United States, and bearing the seal of the Department of State of the United States, for greater certainty is hereto annexed.

(2) to insert in Article 2 words of annulment of Article 33 of the treaty of April 5, 1831 (Document 70); (3) to insert in Article 3 a provision reserving the last monthly instalment payment until the establishment of the new boundary.

On March 15 the committee further reported "without amendment"<sup>5</sup> an article in aid of the Sloo Grant proposed by Senator John Bell, of Tennessee (see *ibid.*, 264, 266); that proposal was the basis of Article 8 of the final text; in its form as first put forward the opening words contained mention of "the mixed company of A. G. Sloo, and others" as one (the Mexican Government being the other) of the contracting parties of February 5, 1853; and it included this para-

<sup>1</sup> For the divided opinions in the Senate and the press reports of the time, see Garber, 108-35; a summary of the Senate groups is in Rippy, 149.

<sup>2</sup> See New York Herald, February 15, 1854, p. 4; the substance of the treaty terms had been printed in the issue of that newspaper for January 20, 1854.

<sup>3</sup> A pencil notation on one of the Senate documents bound in a copy of 34 Regular Confidential Documents (p. 16) indicates that in 1853 the number of copies of confidential prints received in the Senate was 90 and that 82 thereof were thus distributed: 1 to the Committee on Foreign Relations; 56 to Senators; 25 to the Department of State.

<sup>4</sup> The chart of Lieutenant Derby entitled "Reconnaissance of the Colorado River made by order of Maj. Gen. P. F. Smith . . ." is with Senate Executive Document No. 81, 32d Congress, 1st session (serial 620).

<sup>5</sup> This was not rejection of the proposal (cf. Garber, 121, 125).



graph which was adapted from Article 4 of the unperfected convention of March 21, 1853 (Senate Confidential Executive Document No. 15, 33d Congress, 1st session, 34 Regular Confidential Documents, 240; for the English version of the convention signed March 21, 1853, D.S., Unperfected J2, and a translation of the Sloo contract, see Manning, *op. cit.*, IX, 540-46, footnote):

If at any time the two governments should unhappily be at war with each other, neither nation will interrupt the transit of persons and property of either nation, not contraband, which may be sent across the Isthmus [of Tehuantepec], nor vessels of either nation or of the company, at a less distance than sixty miles from the termini of said transit way.

After consideration of the treaty on various dates (see Executive Journal, IX, 263-73, *passim*), the first vote was taken on April 3, when the proviso reported as an amendment to the boundary definition of Article 1 was accepted by 33 yeas to 2 nays (*ibid.*, 277); the next day, on a motion by Senator James Shields, of Illinois, to strike out and insert, a simple majority (19 to 17) voted<sup>1</sup> to retain the boundary clauses of Article 1, with the added proviso; this meant, under the rules of the Senate<sup>2</sup> then (not now) prevailing, that those clauses were deleted; a simple majority (21 to 20) then voted for a line to run from that dividing the Californias where it crossed the Colorado River, down that river to its mouth, thence down the middle of the Gulf of California to the 31st parallel of north latitude, and east along that parallel to the Rio Grande (*ibid.*, 278-79); so that proposal also failed. On April 5 a proposal by Senator William M. Gwin, of California, for a line like that last mentioned as far as the intersection of the 31st parallel with the 111th meridian, and thence (as in the signed treaty) by a "right line" to the Rio Grande at 31°47'30" north latitude, was decisively rejected (12 yeas, 26 nays); then, after reconsideration, the boundary clauses of the signed treaty (with the added proviso) again failed, only a simple majority (22 to 16) voting therefor (*ibid.*, 280-81).

In all the amendments to Article 1 thereafter put forward, the line was described from east to west, as in the final text, and not, as in the signed treaty, from west to east. On April 10 this clause, offered by Senator Gwin, was rejected by 18 yeas to 26 nays (*ibid.*, 284):

Beginning at the point on the Rio Grande where the parallel of 31 degrees 47 minutes 30 seconds of north latitude crosses the same; thence running west one hundred and fifty miles; thence due south thirty miles; thence westerly in a straight line until it reaches the Gulf of California one marine league south of the most southern portion of the Bay of Adair, and to the middle of said gulf; and thence up the middle of said gulf and the Colorado River until it intersects the present boundary line between the United States and Mexico.

<sup>1</sup> The various boundary clauses submitted to vote in the Senate are illustrated on the maps facing p. 330.

<sup>2</sup> Regarding those Senate rules, see vol. 5, pp. 251-52.

More than two thirds of the Senators present then voted (32 to 14) to insert these words, proposed by Senator Thomas J. Rusk, of Texas (*ibid.*):

be as follows: Beginning at the point on the Rio Grande where the parallel of 31 degrees 47 minutes of north latitude crosses the same; thence west one hundred and fifty miles; from whence a right line shall be run due south thirty miles; from whence a straight line shall be run due west until it reaches the Rio Colorado or Gulf of California; thence up the middle of the said gulf and Colorado River until it intersects the present boundary line between the United States and Mexico.

Two days later (April 12) the action last taken was reconsidered and this clause, also proposed by Senator Rusk, was voted (30 yeas, 13 nays; *ibid.*, 289-90):

be as follows: Beginning at the point of the Rio Grande, where the parallel 31°47' of north latitude crosses the same, thence due west one hundred miles, thence south twenty English miles, thence west to 111th meridian of longitude west from Greenwich, thence in a straight line to a point on the Colorado River twenty English miles below the junction of the Gila and Colorado Rivers, thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico.

Then, after the deletion *nem. con.* of Article 2, there was substituted therefor (by 39 yeas to 3 nays) the same wording as that of the final text (*ibid.*, 290-91); and Articles 3 and 4, which were unanimously stricken out, were replaced by this clause<sup>1</sup> as Article 3 (*ibid.*, 291-92):

<sup>1</sup> This was on motion of Senator Rusk, of Texas; in a paper of April 6, 1854 (Senate Confidential Executive Document No. 15, 33d Congress, 1st session, 34 Regular Confidential Documents, 241-42), a very similar amendment is one of those "intended to be proposed" by Rusk; another is the boundary clause voted on April 10 (except that the parallel mentioned is 31°47'30" instead of 31°47'); others are these clauses for Articles 2 and 3, which were not moved in the Senate:

#### ARTICLE II.

The government of Mexico hereby releases the United States from the obligations contained in the eleventh article of the treaty of Guadalupe Hidalgo, together with all claims of her citizens against the government of the United States, arising under the provisions of that article, as well as all other claims arising under said treaty or the law of nations. And the government of the United States in like manner releases the government of Mexico from all claims of the citizens of the United States, arising under treaty or the law of Nations.

#### ARTICLE III.

The government of the United States agrees to restrain, as far as may be in its power, all unlawful expeditions of its citizens against the territory or citizens of Mexico.

Also in the same paper are proposals to strike Articles 7, 8, and 9 of the signed treaty; no motion to strike Article 7 was made; and on the motions of others, on April 12, to delete Articles 8 and 9, Rusk voted to retain them (see Executive Journal, IX, 292-93).

In consideration of the foregoing stipulations the Government of the United States agrees to pay to the Government of Mexico, in the City of New York, the sum of seven millions of dollars, five millions of which shall be paid immediately upon the exchange of the ratifications of this treaty, and the remaining two millions as soon as the boundary line shall be surveyed, marked, and established.

Thus the Senate refused to agree to the assumption by the United States of *any* claims against Mexico, neither those "under treaty or the law of nations" nor contract claims. The report of Marcy on the subject of claims must have been of influence; that report, of March 29, 1854, although not printed, had been sent to the Senate with the presidential message of the same date (Executive Journal, IX, 274-75); its text follows (D.S., 7 Report Book, 58-62); the accompanying list of American claims (printed below under the heading "American Claims against Mexico") comprised fifty-five, of a total of \$9,444,519.85 (including the Garay Grant claim for \$5,283,000), six of the claims being for unstated amounts:

The Secretary of State, to whom was referred the Resolution of the Senate of the 21<sup>st</sup> instant requesting the President "to inform the Senate what are the claims of Mexico and the citizens of Mexico on the United States proposed to be provided for in the Treaty negotiated by Mr Gadsen, and also, what are the claims of the United States, or the citizens thereof proposed to be provided for by the same Treaty, and in the amendments proposed to said Treaty, distinguishing the claims which would be provided for by the Treaty and as proposed to be amended by the President and Committee on Foreign Relations, and that the President be, also, requested to communicate to the Senate all the information in his possession, or in that of the Executive Departments relative to the amount and justice of said claims, and, also, the names of the claimants so far as known to the Executive",— has the honor to report to the President, that the documents in this Department do not furnish the means of specifying the claims of Mexico and her citizens upon the United States which would be provided for by the Treaty, either as negotiated by our Minister at Mexico or as proposed to be amended. Neither the particulars of the claims by the Mexican Government or its citizens have been presented to this Government except in a very few instances. The diplomatic correspondence between the two governments only discloses the nature and character of the claims for which Mexico may consider herself entitled to indemnification. By far the largest class of these arises from the alleged neglect of the United States to fulfil the Stipulation in the 11<sup>th</sup> Article of the Treaty of Guadalupe relative to Indian incursions. The two Governments differ in regard to the true meaning of that article. Mexico claims full compensation for all damages which have resulted from those incursions since the date of that Treaty. She, also, claims of the United States damages for the destruction of property and other losses occasioned by a hostile expedition against Metamoras, and by other marauding excursions into her territory from the United States other than those by Indians. She alleges that these expeditions were fitted out in the United States, and that the adventurers were mostly American citizens. It is scarcely necessary to say that the validity of both classes of these claims is denied by this government. Should the Treaty be ratified as concluded by the negotiator, or as amended, all claim for reparation from the United States would be removed.

The accompanying list of claims of the citizens of the United States against Mexico includes, it is believed, all which have been brought to the notice of the Department, and the origin of them, so far as the papers on file disclose that fact.

The statement has been made out from the documents presented by the complaining parties. Many of them are unsustained by proof, and some so imperfectly stated as scarcely to disclose the true motive of the acts complained of. On the other hand, several of the more important claims are accompanied with

very voluminous documents which it would be necessary to examine critically in order to ascertain precisely the character of the claims. Those described in the accompanying statement as claims "for seizure of goods", "excess of duties", &c, are of this nature. Many of the documents are in Spanish of which no translations have been furnished, or, as yet, made at the Department. To make translations of them would require much time and labor.

There are, undoubtedly, a number of claims by our citizens presented to our Legation at Mexico, of which no account is found in this Department.

In the condition they now are, it would be very difficult, if not impossible, to classify them in the way contemplated by the Resolution of the Senate. The Treaty as negotiated would include all claims well founded of our citizens on Mexico, as well those arising on contract, as those resulting from tortious acts, since the date of the Treaty of Guadalupe, and those, also, if any, not provided for by that Treaty. "As amended by the President", the first class,—claims arising on contracts merely, would not be provided for by the Treaty. It is presumed that the amendment proposed by the Committee of the Senate on Foreign Relations would make an exception to the excluded class.

Article 8 of the signed treaty also failed of acceptance on April 12 (22 yeas, 16 nays); but Article 9 was retained by 25 yeas to 10 (Executive Journal, IX, 292-93).

On April 17 the new article proposed by Senator Bell (in very nearly its original form, except for the omission of the paragraph above quoted) was defeated by 22 yeas to 17 nays, less than a two-thirds majority (*ibid.*, 299).

Thus far the proceedings of the Senate had been as in Committee of the Whole; the amendments which had been passed as in Committee were now all approved in the Senate by votes of varying range, the closest of which was 34 to 13; the boundary definition was accepted by 34 to 11; the Sloo article put forward by Senator Bell (now slightly modified) received once more an insufficient majority (28 yeas, 18 nays); the vote was then taken on the resolution of advice and consent, embodying all the amendments; and that resolution failed (April 17) by 27 yeas to 18 nays, less than two thirds (*ibid.*, 299-306).

Comparison of the terms of the resolution which failed on April 17 with the final text shows these differences: (1) those two courses of the boundary which, by the treaty, run westward for about 165 miles along the parallel of 31°20' to the 111th meridian and thence direct to a point on the Colorado River 20 miles below the junction thereof with the Gila, were, by the resolution, respectively courses running due west to the same meridian along a parallel about 11 miles north of 31°20' and thence to the same terminal point on the Colorado River; (2) the payment (Article 3) was \$7,000,000 in the resolution instead of \$10,000,000 in the treaty; (3) the resolution called for a treaty of eight articles, Article 8 of the final text not being included in any form; (4) the corrections of one word in Article 7 (as renumbered) and one word in the concluding sentence were not made by the resolution.

The vote of April 17 was ordered reconsidered the next day (*ibid.*, 306); and a week later (April 25) the resolution of advice and consent was recast in its final form; the boundary definition was adopted by 39 to 7; the closest vote was that on the Tehuantepec clauses (Article 8;

the Sloo proposal of Senator Bell), which were inserted by 30 yeas to 14 nays; the passage of advice and consent with the amendments was by 33 to 13 (*ibid.*, 309-15).

The amended treaty differed from the signed treaty in these essentials: (1) the boundary clause was altered; (2) the payment to Mexico was reduced from \$15,000,000 to \$10,000,000; (3) no claims of American citizens were assumed by the United States, all remaining intact; (4) the Mexican claims against the United States for Indian depredations were extinguished; (5) Article 33 of the treaty of April 5, 1831 (Document 70), was abrogated;<sup>1</sup> (6) all the Indian-incursion clauses and the invasion clauses of the signed treaty were deleted; (7) Tehuantepec clauses (Article 8) were inserted.

Logically, the latitude figure (31°47'30'') in the second paragraph of Article 4 should have been altered to 31°47', so as to conform to the line of Article 1; but the inconsistency seems not to have been noticed at the time.

During the pendency of the treaty nine presidential messages transmitted relevant papers to the Senate in response to requesting resolutions;<sup>2</sup> those messages were dated respectively February 15, March 7, 14, 21, 29, April 1, 5, 11, 13; all of them except that of February 15 are printed in Richardson (V, 232-38, *passim*) and also in the Executive Journal; but only two of them, those of February 15 and March 14, were printed at the time with the transmitted papers (see Executive Journal, IX, 240, 247, 260, 265-66, 268-69, 271, 274-75, 276-77, 279-80, 283, 285-86, 298). With the message of February 15, 1854, were transmitted a copy of the Tehuantepec Convention signed at Mexico City March 21, 1853, and a translation of the Sloo Grant, a copy of which was annexed to that convention (Senate Confidential Executive Document No. 17, 33d Congress, 1st session, 34 Regular Confidential Documents, 273-87); with the message of March 14, 1854, was transmitted correspondence relevant to that convention (Senate Confidential Executive Document No. 16, 33d Congress, 1st session, *ibid.*, 249-72).

The papers transmitted to the Senate, but not printed at the time, were: (a) with the message of March 7, diplomatic correspondence and instructions regarding Article 11 of the Treaty of Guadalupe Hidalgo, comprising thirty-two items, some in part only and some with enclosures; the earliest is an instruction of Clayton to Letcher of November 10, 1849, and the latest the note of Marcy to Almonte of December 22, 1853; (b) with the message of March 21, ten items, six of which are the relevant instructions to Gadsden; the others are Gadsden's despatch (in part) of November 20, Gadsden's note to Bonilla of November 29, Bonilla's note to Gadsden of November 30,

<sup>1</sup> In arguing the Piedras Negras affair (as to which, see Moore, *International Arbitrations*, III, 3035-37) Marcy fell into a surprising error by asserting in a note to Almonte of January 23, 1856, "that the obligations of Mexico to the United States pursuant to the 33d. Article of the Treaty of 1831 are still in full force"; Almonte did not fail to notice the slip in his note of January 26, 1856 (see Manning, *op. cit.*, IX, 197-98, 820-22).

<sup>2</sup> One of the requests was antecedent to the submission of the treaty (see Executive Journal, IX, 183).

and the first five of the six protocols of the negotiations of December 1853 (for the papers enumerated, see below under the heading "The Negotiations"); (c) with the message of March 29, a report of Marcy of the same date regarding claims (that report is printed above; the list of claims accompanying it is printed below under the heading "American Claims against Mexico"); (d) with the message of April 1, the letter of Ward to Gadsden dated November 14, 1853 (printed below under the heading "The Negotiations"); (e) with the message of April 5, excerpts from three despatches on the subject of expeditions organized in California for invasion of Sonora; (f) with the message of April 11, a report of Marcy calling attention to papers previously transmitted regarding Article 11 of the Treaty of Guadalupe Hidalgo; (g) with the message of April 13, a report of Marcy (printed in part above under the heading "Background") regarding instructions to Letcher and Conkling and their despatches concerning the abrogation of Article 11 of the Treaty of Guadalupe Hidalgo (see D.S., 7 Report Book, 39-40, 54-55, 57-62, 64, 66-67, 79-80).

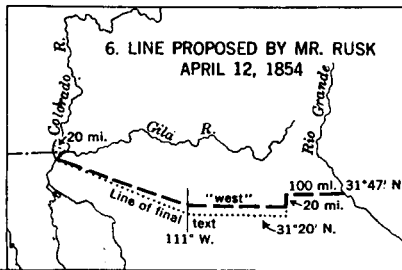
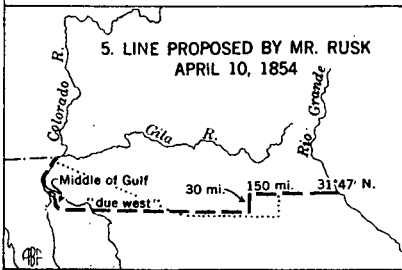
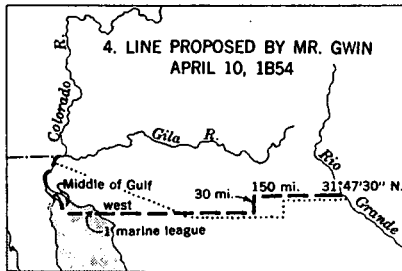
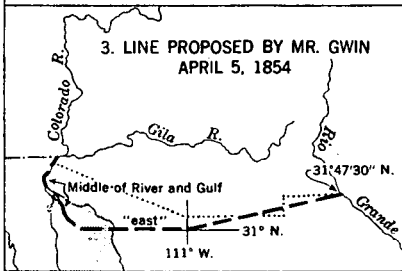
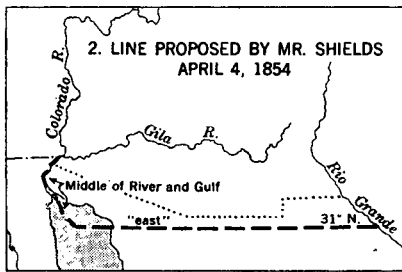
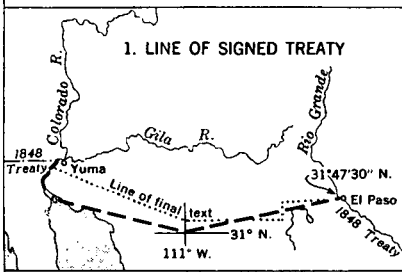
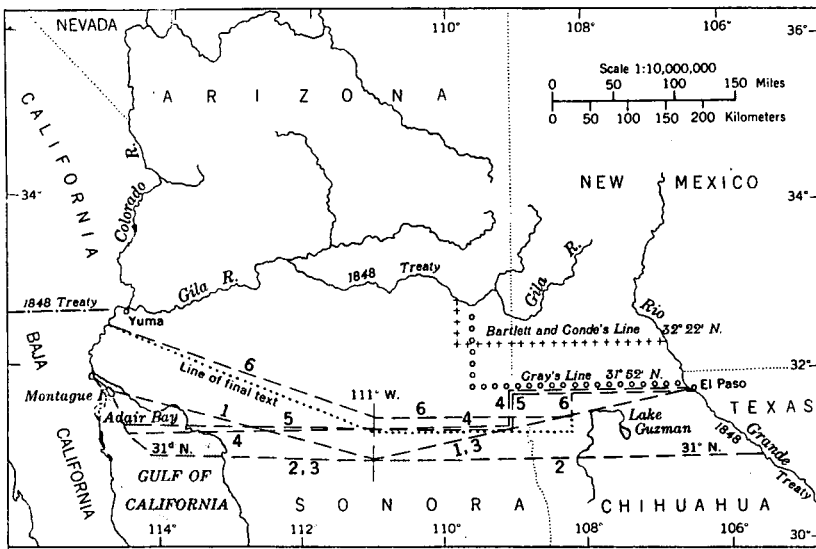
On April 26 the Senate, by a decisive majority, rejected a motion to remove the injunction of secrecy from the treaty "and the documents and proceedings relating thereto" (Executive Journal, IX, 316); and a somewhat similar motion was defeated on June 29 by reference to committee (*ibid.*, 342-43).

#### SENATE VOTES ON BOUNDARY CLAUSES

The maps on the facing page have been prepared to illustrate certain boundary proposals submitted to vote in the Senate. The map at the top indicates the line of the signed treaty (No. 1), five of the proposed modifications thereof which were voted upon in the Senate (Nos. 2-6 inclusive), and the line of the final text of the treaty (shown by dots, except where it coincides in part with lines Nos. 5 and 6). The six smaller maps, at half the scale of the composite map at the top, bear the same serial numbers and are individually titled.

In compiling the maps, the rivers and the coast of the Gulf of California are shown as they actually were in 1854, as nearly as it has been feasible to map them in accordance with present standards of accuracy. That is, instead of utilizing maps based upon the inadequate surveys of the 1850's, the courses of the rivers and the position of the coastline are represented in their true location so far as it is expedient to determine the difference between these rivers and shorelines of 1854 and their courses as they are mapped with relatively high accuracy in 1941. The course of the Colorado River, from Yuma southward to the Gulf of California, is based upon data in Godfrey Sykes, "The Delta and Estuary of the Colorado River" (Geographical Review, XVI, 232-55, April 1926), and upon the map facing page 254. The line representing the survey by Lieutenant J. C. Ives in 1857 was selected because of the proximity of the survey date to 1854.

The Rio Grande above El Paso for about fifteen miles has been taken from a map in the records of the Supreme Court entitled "Map of the Boundary Line between New Mexico and Texas in the Valley



DEPARTMENT OF STATE, 1941

GADSDEN TREATY: SENATE VOTES ON BOUNDARY CLAUSES





of the Rio Grande River from the Parallel of 32 Degrees North Latitude Southwardly to the Parallel of 31 Degrees and 47 Minutes" (Supreme Court of the United States, October Term, 1930, No. 2, original, *State of New Mexico, Complainant v. State of Texas, Defendant*). This map accompanied the report of the Commissioner, Samuel S. Gannett, signed July 17, 1930. The line therein defined is that designated in section V (1) of the Report of the Special Master of April 21, 1926, and accepted by the Supreme Court, except for a minor change at the northern terminus, near 32° north latitude. Gannett's survey, made in 1929-30, reestablished as nearly as possible the course of the Rio Grande as of September 9, 1850. Gannett's map is on a large scale, 1:24,000, and shows very clearly both the 1930 river course and the presumed 1850 course adopted as the New Mexico-Texas boundary. The decree of the Supreme Court of March 23, 1931, without the map, is in 283 U.S. 788.

One turning point in the line described in the Gadsden Treaty as signed, was "two marine leagues to the North of the most Northern part of the Gulf of California"; the proviso to Article 1 voted by the Senate on April 3, 1854 (33 to 2), had the effect of fixing this turning point at one marine league north of the most southern point of Montague Island as shown on the chart of December 1850. The line of the signed treaty, with the proviso, failed in the Senate on April 4 (19 to 17) and again on April 5 (22 to 16); that line is No. 1 of the maps.

Also on April 4 the proposal of Senator Shields for the line of the 31st parallel from the Gulf of California to the Rio Grande failed (21 to 20); that line is No. 2 of the maps.

No. 3 of the maps is in part line No. 1 and in part line No. 2; this proposal of Senator Gwin for the 31st parallel from the Gulf of California to the 111th meridian and thence direct to the Rio Grande at 31°47'30" failed on April 5 (12 to 26).

Another proposal of Senator Gwin was for a line from the Rio Grande at 31°47'30" west 150 miles, then south 30 miles, then direct to the Gulf of California at a point "one marine league south of the most southern portion of the Bay of Adair"; this proposal failed on April 10 (18 to 26). It is No. 4 of the maps; the point of this line on the Gulf of California is at approximately 31°17'30" north (see Hydrographic Office Chart No. 1006); in 1854 that point was doubtless thought to be at approximately 31°, or about 20.1 statute miles to the south; see the position of Adair Bay on "Map of the United States and Their Territories between the Mississippi and the Pacific Ocean . . .", dated 1857-58, in Emory Report (Senate Executive Document No. 108, 34th Congress, 1st session, serial 832).

No. 5 was the proposal of Senator Rusk for a line from the Rio Grande at 31°47' west 150 miles, then south 30 miles (being thus far almost identical with No. 4), and then west to the Gulf of California, which it would have reached at approximately 31°20'54", or about 3.9 miles north of No. 4, the proposal of Senator Gwin (but about 24 miles north of where No. 4 was then *thought* to reach the Gulf of California), No. 5 was voted (32 to 14) on April 10, but was reconsidered two days later.

No. 6 was voted on April 12 (30 to 13); that line was also proposed by Senator Rusk; it ran from 31°47' on the Rio Grande west 100 miles, then south 20 miles, then west to the 111th meridian, and thence direct to the Colorado River, 20 miles below its junction with the Gila.

It is difficult to explain the Senate proceedings on lines Nos. 5 and 6; the territorial difference between them is large, nearly 10,000 square miles. But the votes on these two proposals of Rusk were quite similar; 39 of the 46 Senators recorded on April 10 voted the same way on April 12 (28 aye, 11 nay); two Senators changed from aye to nay, and two from nay to aye; three Senators voting on April 10 (two ayes and one nay) are not recorded for April 12 (cf. Garber, 124, where the larger cession of No. 5 is deemed the smaller cession of No. 6). Perhaps there was mistaken or doubtful geography; the proposal of No. 5 was very strangely worded; the line ran "due west until it reaches the Rio Colorado or Gulf of California" and "thence up the middle of the said gulf and Colorado River"; this might mean that the drafter was uncertain whether the line reached the gulf or the river; or, conceivably, he may have thought that "Rio Colorado" meant "Gulf of California"; but neither hypothesis seems plausible.

Failure on April 17 (27 to 18) of the resolution of advice and consent embodying line No. 6 and amendments to other than boundary clauses was reconsidered the next day; on April 25 the boundary definition of the final text was included (39 to 7) in the resolution of advice and consent which was adopted; that final line runs from the Rio Grande at 31°47' west 100 miles, then south to 31°20' and along that parallel to the 111th meridian, and thence direct to the Colorado River 20 miles below its junction with the Gila. The territorial cession of the final text measures some 3,228 square miles more than that by line No. 6.

#### AFTER THE SENATE AMENDMENTS

The Senate resolution of advice and consent, with amendments, was adopted on April 25, 1854; the exchange of ratifications (Article 9) was to take place at Washington within six months<sup>1</sup> from signature, or by June 30, 1854.

The amendments proposed by the Senate were so far-reaching that it might fairly be said that their effect was the writing of a new treaty; the choice to be made by the Chief Executives of the two countries was either the text framed in the Senate or no treaty; the decision was first to be taken by President Pierce, and, if he accepted the Senate amendments, then by General Santa Anna, who was ruling without a national legislature.

It was with reluctance that Pierce concluded to accept the action of the Senate and to propose the amended treaty to the Mexican Government; his decision was made by May 6, when this instruction was sent to John S. Cripps, Secretary of Legation at Mexico City and Chargé d'Affaires ad interim, Gadsden being still in the United States (D.S., 17 Instructions, Mexico, 1-3):

<sup>1</sup> One of the Senate amendments enlarged the time from four months to six.

The Treaty negotiated by General Gadsden, the Envoy Extraordinary and Minister Plenipotentiary at Mexico, was amended in several important particulars by the President before it was sent to the Senate. In that body numerous other amendments were also made.<sup>1</sup> You will receive a copy of the amendments made by the Senate, and also a copy of the Treaty as it now stands amended by the President and the Senate, with this communication.<sup>2</sup> General Almonte, the Mexican Minister here, has been furnished with the amendments, and will send them to his Government. There was much difficulty in obtaining the approval of the Instrument by the Senate in its present shape, though that body took the liberty of putting it in the form most acceptable to it. There has been much out-door opposition to the Treaty here, and it is understood that some of those who endeavored to defeat it will make efforts in Mexico to have it rejected by the Mexican Government. It is very certain—and Mexico should be assured of that fact—that nothing better for Mexico can be obtained.

General Gadsden is directed to return as soon as possible to his post, but, being in South Carolina, he will not be able to leave in the Steamer of the 14th; from New-Orleans. A government vessel will take him out as soon as possible. There is no time to be lost in bringing the matter to a close; for the ratifications are to be exchanged here by the last day of June. If the Treaty be sent to the Senate again for so immaterial an alteration as that of extending the time for the exchange of the ratification, it is believed there would be great danger of the unfavorable action of that Body.

Although to General Gadsden will be entrusted the business of getting the consent of President Santa Anna to the amendments and the ratification of the Treaty in its present shape,<sup>3</sup> you may be able to do good service before his arrival in preparing for a favorable result. To that end you will direct your efforts, by counteracting, as far as it may be in your power, the opposition of those who are interested in defeating it.

General Gadsden will, I have no doubt, be authorized to assure the Mexican Government that the President will ratify the Treaty as amended by the Senate and be prepared to exchange ratifications as soon as that of Mexico is received in this city. General Gadsden will, I think, be in Mexico fully empowered to act in this matter in ten or twelve days after this communication is received by you, and I hope that there will be no hesitation or delay on the part of the Mexican Government to bring this protracted negotiation to a successful close. The only question which that Government has to pass on is the acceptance or rejection of the Treaty in its present form; for any attempt to change it will, as I am persuaded, involve its defeat.

The Senate amendments were also communicated to the Mexican Minister at Washington, General Juan N. Almonte, in response to

<sup>1</sup> This and the preceding and succeeding sentences would seem to mean that the amendments, taken together, were those of the President plus those of the Senate; but of the four amendments to the signed treaty proposed by Pierce, two (to Articles 2 and 3) were wholly disregarded by the Senate; for Article 8 the presidential proposal was to retain the opening clauses and delete the rest; the Senate struck out the entire article; finally, Pierce proposed to change "seventy-seventh" to "seventy-eighth" in the concluding phrase of the treaty, which was done.

<sup>2</sup> These are almost certainly two papers in the archives of the Embassy at Mexico City misfiled following an instruction of December 8, 1853; the running text of the amended treaty, in English, which omits the unamended paragraphs of Article 1, precedes the statement of the amendments (D.S., file 026 Treaties/2150, enclosure to despatch No. 7316 from Mexico City, dated September 3, 1938).

<sup>3</sup> If that business had awaited the arrival of Gadsden at Mexico City, exchange of ratifications by June 30 would have been well nigh impossible. Gadsden's despatch No. 31, of June 9, 1854 (printed below), seems to have been sent by the first mail available after he reached Mexico City on June 4; and that despatch is marked as received at the Department of State on June 26.

this request made by him on May 4 (D.S., 7 Notes from the Mexican Legation, translation):

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, has the honor of addressing himself to the Honorable William L. Marcy, Secretary of State, for the purpose of informing him that tomorrow night he will despatch his mail to Mexico and that he would wish to be able to communicate to his Government the status of the treaty lately concluded between this Republic and that of Mexico since it has been returned to the Executive with the amendments adopted by the Senate.

The undersigned would, therefore, be grateful to the Honorable Mr. Marcy if he will be pleased to send him a reply as soon as possible, should there be no difficulty in the way, in order that he may transmit the same, without delay, to his Government by the steamer which is about to sail from New Orleans.

With this answering note of May 5 Marcy communicated the Senate amendments, but he said nothing definite in regard to the attitude of the President toward them (D.S., 6 Notes to the Mexican Legation, 382):

The Undersigned, Secretary of State of the United States, has received the note of General Almonte, Envoy Extraordinary of Mexico, of yesterday, desiring to be informed of the actual condition of the Treaty lately concluded between this government and that of the Mexican Republic.

In reply, the Undersigned has the honor to acquaint General Almonte, that the instrument referred to has been approved by the Senate of the United States with certain amendments, a copy of which is herewith communicated.<sup>1</sup>

General Gadsden will, it is presumed, shortly return to Mexico with instructions as to the views of the President on the subject of the Treaty. Before his departure from the United States General Gadsden will visit Washington. Consequently, he will not be able to embark at New Orleans in the Steamer of the 14th. instant for Vera Cruz. No doubt, however, he will reach New Orleans in season to start in the succeeding one.

The text of the Senate amendments became known to the Mexican Government during the latter part of May through two channels, the Mexican Minister at Washington and the American Secretary of Legation at Mexico City;<sup>2</sup> and Cripps, pursuant to his instructions, urged the policy of ratification at an interview had with Bonilla (the date of the interview is not stated; the instruction to Cripps of May 6 was received at the Legation on May 14 according to the records;

<sup>1</sup> Perhaps by transmitting a print (or written copy) of the treaty annotated to show (but certainly for the English version only) the deletions, insertions, and other alterations.

<sup>2</sup> Cripps had received with the instruction of May 6 (printed above) both the text of the Senate amendments and a running copy of the "Treaty [i.e., the English version] as it now stands amended". Gadsden wrote (in his note to Bonilla of June 6, 1854, printed below) that the action of the Senate had "resulted in a project, a copy of which has been compared by the Chargé d'Affaires Mr Cripps previous to my return to this City, with that Genl Almonte, the accredited Minister from Mexico, had forwarded to the Government he represents"; that comparison must have been of English with English, which would mean that Almonte had sent to his Government the Senate amendments in English, whether with or without a translation. With the cited note of June 6 Gadsden transmitted the "project"; but some days earlier the Mexican instrument of ratification had started on its way to Washington.

D.S., file 026 Treaties/2146, despatch No. 6884 from Mexico City, dated June 21, 1938; this was an exceptionally brief period of transmission for that time, when communication between the two capitals frequently required fifteen days or even more).

Santa Anna was constrained to yield; the Mexican instrument of ratification was signed on May 31 and was at once sent to the Legation at Washington by special messenger;<sup>1</sup> with it went a power to Almonte to exchange the ratifications and also, it seems, authority to enter upon "further negotiations"; but at this stage modification of the terms was impossible. In his message to the House of Representatives of June 20, 1854, Pierce wrote (Richardson, V, 241):

I have received information that the Government of Mexico has agreed to the several amendments proposed by the Senate to the treaty between the United States and the Republic of Mexico signed on the 30th of December last, and has authorized its envoy extraordinary to this Government to exchange the ratifications thereof. The time within which the ratifications can be exchanged will expire on the 30th instant.

There is a provision in the treaty for the payment by the United States to Mexico of the sum of \$7,000,000 on the exchange of ratifications and the further sum of \$3,000,000 when the boundaries of the ceded territory shall be settled.

To be enabled to comply with the stipulation according to the terms of the treaty relative to the payments therein mentioned, it will be necessary that Congress should make an appropriation of \$7,000,000 for that purpose before the 30th instant, and also the further sum of \$3,000,000, to be paid when the boundaries shall be established.

I therefore respectfully request that these sums may be put at the disposal of the Executive.

I herewith transmit to the House of Representatives a copy of the said treaty.

Perhaps the decision of the Mexican Government was officially made known to Marcy shortly before June 20; there is this note of that date from Marcy to Almonte (D.S., 6 Notes to the Mexican Legation, 389):

The Secretary of State presents his compliments to General Almonte, and has the honor to return herein enclosed, the copies of the Treaty, (in the English and Spanish languages,) left by him at the Department this morning.

General Almonte will observe upon an examination of the English copy, that a few verbal inaccuracies have been detected upon a careful comparison of that copy with the original Treaty.<sup>2</sup> These errors are noted in pencil, and in correcting them it is requested that General Almonte make the corresponding alteration in the Spanish, should it be necessary.

It is desirable that the copies be returned to the Department so soon as it may suit General Almonte's convenience.

It thus appears that the Spanish version of the amended treaty was first before the Department of State on June 20, 1854, and that corrections therein to conform to the exact wording of the English were left to the Mexican Minister;<sup>3</sup> moreover, from the following note of

<sup>1</sup> According to Gadsden, this courier left Veracruz by the steamer of "a week earlier" than June 14; if June 7 is exact, the messenger could hardly have started from Mexico City later than June 4 (see vol. 5, p. 339).

<sup>2</sup> And necessarily with the text of the Senate amendments also.

<sup>3</sup> General Almonte was "known to be a complete master of the English language" (Sir Edward Thornton, quoted in Moore, *International Arbitrations*, III, 2447).

Almonte of June 21 it is also clear that the United States instrument of ratification, embodying the text in both languages, was then about to be written (D.S., 7 Notes from the Mexican Legation):

General Almonte presents his compliments to the hon: Mr Marcy, Secretary of State, and has the honor to send back herein enclosed the Copies of the treaty in both languages, corrected according to Mr Marcy's wishes.

General Almonte desires to have the said Copies returned to him after its contents have been transfered to the treaty which is to be exchanged on the part of the government of the U. States for that which has been intrusted to Genl Almonte by his government.

By Article 3 the sum of \$7,000,000 was to be paid "in the city of New York" to the Government of Mexico by the Government of the United States "immediately upon the exchange of the ratifications of this treaty". The necessary appropriation by Congress was thus a condition precedent to the exchange. The presidential message of June 20 to the House of Representatives (printed above) was laid before that body on June 21 and was referred to the Committee on Ways and Means; on June 22 the committee reported a bill; on Monday, June 26, general debate<sup>1</sup> began and was continued the next day; on June 28, after debate under the five-minute rule, the bill passed by 103 to 62; in the Senate the vote on June 29 was 34 to 6 (see Congressional Globe, 33d Congress, 1st session, 1466, 1476, 1519-24, 1535-49, 1561-65, 1568, and appendix, 1008-68, *passim*); on that day the bill became law (10 Statutes at Large, 301) and the treaty was ratified by the United States. Almonte wrote formally that he had received the Mexican instrument of ratification and was "fully authorized to proceed to the exchange of ratifications", requesting Marcy to "designate the day and hour" (D.S., 7 Notes from the Mexican Legation, translation; Manning, *op. cit.*, IX, 718-19, June 29, 1854); Marcy answered, making the appointment for noon of June 30 (D.S., 6 Notes to the Mexican Legation, 390-91; Manning, *op. cit.*, IX, 166); and then, just six months from the signing of the treaty, the ratifications were exchanged and the proclamation issued.

When Gadsden left Charleston on May 21, 1854, to return to his post (see Manning, *op. cit.*, IX, 707-8), he had this instruction of May 11 regarding ratification of the treaty (D.S., 17 Instructions, Mexico, 4-6):

With this communication you will receive a copy of the amendments made to the Treaty concluded by you with Mexico on the 30th. of December, last. You

<sup>1</sup> During this debate various critics spoke of the treaty as if it had been completed and was in force; it was also contended that the "negotiating and concluding" of the treaty was a "breach of the privileges of the House" and that the "pretensions" of the presidential message were "that the payment of these ten millions is obligatory upon the House; that the supremacy of the treaty-making power deprives the Congress of a right of refusal, and exacts the money from them". All this was peculiarly inept; in this case Congress was consulted in advance; there was no international obligation of the United States in existence until after the enactment of June 29, 1854; if the appropriation had not been voted, the ratifications of the treaty could not have been exchanged and the treaty would have failed to enter into force.

will submit the amendments to the Mexican Government, at as early a period as practicable, for its approval or rejection. You will be able to assure it from what you have learned here that there is no hope of obtaining further amendments or a different treaty, should this be rejected.

Considering the magnitude of our difficulties with that country, as the means of removing those of a threatening character the President has come to the determination to ratify the Treaty as amended, if it should be approved and ratified by the Mexican Government. I trust you will be able to satisfy Mexico that the sum stipulated to be paid is liberal considering the concessions and grants she thereby makes. Such is certainly the view of this government. There was a vigorous opposition in the Senate to the treaty in its present shape, and the appropriation of the sum required to comply with the stipulations will probably encounter considerable opposition in the House, yet there are good reasons to believe the President will be furnished with the means of carrying it out.

Should Mexico propose to make any alterations, or delay in giving her approval to the amendments, all ideas of any treaty arrangement must be abandoned, for the present at least. I am satisfied that the Treaty as it is would be endangered if it were to be sent again to the Senate for any immaterial change. You will urge upon the Mexican government to take it as amended by the Senate.

It will be useless for you to continue negotiations with a view to any further modifications, for there is no ground to hope that one essentially different in character could receive the approval of the Senate, even should the President be disposed to send such a one to that body.

If at the time when the Mexican Government ratifies the Treaty, there should not be a reasonable probability of its ratification reaching here in season, the ratification might itself contain a clause extending the time for the exchange. It is possible that the Senate might consent to such an extension.

Gadsden had no influence on the making of the decision of the Mexican Government to accept the amended treaty, as he arrived in Mexico City on the evening of Sunday, June 4, when the messenger taking the instructions to Almonte had almost certainly left; of that fact Gadsden was at first unaware; so at an interview with Bonilla, by note to him, and at a conference with Santa Anna, Gadsden argued as best he could for ratification of the treaty; learning then of the instructions already forwarded to Almonte, he reported by this despatch of June 9, which, it seems, was sent by messenger to Veracruz on the day of its date, so as to catch the steamer of June 14 for New Orleans<sup>1</sup> (D.S., 18 Despatches, Mexico, No. 31):

I arrived at the City of Mexico on the evening of the 4<sup>th</sup> instant; and in an interview on the subsequent day, presented to the Minister of Foreign Relations, the considerations which would alone influence the President of the U. States to accept of the Treaty made with this Republic as amended by the Senate— Mr Cripps the Chargé d'Affaires ad interim; on the receipt of a communication from the State Department of an earlier date; had sought a conference with that Minister, and had fully explained and impressed through His Excellency on the Mexican Government, the policy of accepting and ratifying the Treaty as modified; before the limitation for that purpose, fixed by the Senate, should expire— At each of these interviews, and at one subsequently had with the President of Mexico direct; did his Excellency and Minister, express their unqualified dissent to an Instrument which was deficient in all the higher binding requisites of international agreements;—which was not reciprocal; but onerous and offensive to the weaker party, in all its provisions—which did not adjust the issues between the two Republics so as to promise harmony of relations in the future; which would reopen many of a most threatening character; and which as involving

<sup>1</sup> The despatch is endorsed as received on June 26, when the exchange of ratifications at Washington was awaiting only the enactment of the necessary appropriations.

private claims and demands, were always most difficult to arrange; and which was particularly exceptionable in the eighth (8) article; as asserting under certain contingences; the right of protection of a private interest and speculation, and on conditions which seem to involve the surrender of nationality in the right of eminent domain; not only to the U States, but to every other nation which under Treaty with Mexico, might claim what was granted to the most favored— While it was difficult to rebut, on my part; all these acknowledged and perplexing truths; I felt deprived, of both the will or ability, to urge any considerations in favor or Justification of an Instrument of assumed agreement: which in its inequality and want of reciprocation; was so repugnant to one of the parties who had yet to accord its assent; and which was obnoxious to all the objections urged by High Functionaries: who as charged with the protection of the interests and integrity of Mexico, were now held to a fearful responsibility by a threatened internal commotion; the issue of which no sagacity at this crisis can foreshadow— There was nothing remaining therefore for this Legation; in upholding the policy and institutions of the U States on all occasions inculcating in its relations with Foreign Governments and particularly with the weaker—The most commendable attribute of *Power: Magnanimity*:—than to explain the facts, and to present the considerations as contained in the correspondence with the Department of State at Washington for an acquiescence on the part of Mexico in the conditions of a proffered agreement; however unacceptable, without hazarding this probable last immediate opportunity, of reconciling in part the existing difficulties between the Two Countries— At the close of our conferences I was advised by Mr Bonilla Minister of Foreign Relations that not anticipating my arrival at Mexico in time for any arrangements on the Treaty as amended; and unadvised as to what instructions I might bring; full powers through a Special Messenger; had been forwarded to Genl Almonte to act in the premises— That the presence of that Minister near the Government at Washington; and the opportunities he would enjoy of free and frank conferences with the President and his most influential Advisers in the Senate: on modifications to be obtained in the terms of the Treaty more acceptable to Mexico; before the period fixed for its ratification should expire, had influenced the Mexican Government in the direction thus given to further negotiations— According with these views, as probably best calculated, within the time limited; to bring the relations of the Two Governments in harmony—I deferred for the present any further proceedings under the commission with which charged— You have herewith embodied in writing a condensed Summary of the conferences with the President of the Republic and the Minister of Foreign Relations marked (f) with the response (f) from His Excellency the Minister confirming the statement in this communication—

With the foregoing despatch Gadsden transmitted his correspondence on ratification with the Mexican Minister of Foreign Affairs; it is to be borne in mind that this note of June 6 was written by Gadsden before he had been informed of the instructions previously sent to Almonte at Washington (*ibid.*, enclosure):

The Undersigned Envoy and Minister of the United States in resuming his official relations as such, has the honor to submit to His Excellency Don Manuel Diez de Bonilla, Minister of Foreign Relations for the consideration of the Government of Mexico, the project of a Treaty which has in some of its provisions, been substituted by the Senate of the U States for the Treaty which was concluded in Mexico on the 30<sup>th</sup> of December past— This last Instrument His Excellency is well advised, received the approbation of the President of the U States and was submitted to the Senate for their advice and concurrence— The unexpected dissent however of a portion of that Body to some of its provisions has resulted in a project, a copy of which has been compared by the Chargé d'Affaires Mr Cripps previous to my return to this City, with that Genl Almonte, the accredited Minister from Mexico, had forwarded to the Government he represents— The President of the U States though greatly disappointed, that his constitutional advisers could not accord their necessary concurrent approbation



to an Instrument of agreement which promised a happy reconciliation of all the disturbing issues between the Two Neighboring Republics; Yet in consideration of the magnitude of those difficulties; and as the only immediate means of removing in part, those of most threatening character, has come to the determination, to accord his assent to the Treaty as amended, if it should be approved and ratified by the Mexican Government— The Undersigned does not deem it important here to repeat, the substance of a brief conversation had with his Excellency on the 4<sup>th</sup> instant<sup>1</sup> or to refer to a conference with Mr Cripps of an earlier date, impressing on the Mexican Government the considerations which will induce the President of the U States to accept the Treaty as amended by the Senate— The views as conveyed in the conferences referred to, The Undersigned trusts have been so favorably entertained by His Excellency as to recommend a prompt ratification, of the Treaty, as now presented as a ratification on the part of Mexico, is alone necessary to make that Instrument the Supreme Law of the Two Republics— Any delay in according this assent or any attempt to submit alterations probably more reciprocal or more acceptable to Mexico, would most assuredly endanger the Treaty, if it were to be sent again to the Senate of the U States— There would be a want of candor therefore on the part of the Undersigned to give any assurance to the Mexican Government that any further modifications in the Treaty as now submitted for acceptance, could possibly be obtained, for there is no ground to hope that one essentially different in character could receive the approval of the Senate, should the President be disposed to submit such a one to the consideration of that Body— The Undersigned therefore expresses the hope that Mexico will yield a willing acquiescence to the provisions of the Treaty as now submitted for its ratification, and not forfeit the last immediate opportunity of reconciling existing disagreements and of restoring those relations of peace and amity which it is the interest of the two Neighboring Republics to perfect and perpetuate— His Excellency will recognize in the limit as to time placed on the ratification of this Treaty; the necessity of an early response to this communication; as the Undersigned is desirous to forward the same by a special Messenger from this City to leave on Friday Morning<sup>2</sup>—

The answer of Bonilla (*ibid.*, enclosure, June 8, 1854) to Gadsden's note of June 6 was to the effect that before the arrival of Gadsden at the capital appropriate instructions<sup>3</sup> had been sent by the Minister of Foreign Affairs to General Almonte, since he was more directly in touch with the Government of the United States ("como mas inmediato al Gobierno de Washington").

From Gadsden's next despatch (not received at Washington until July 1, after proclamation of the treaty) these blunt passages, wherein he placed on record his disapproval of the Senate amendments, are excerpted (*ibid.*, No. 32, June 17, 1854; in full in Manning, *op. cit.*, IX, 715-18):

The Fulton most probably left Vera Cruz on the 14<sup>th</sup> instant, which will have afforded ample time for the despatches from this Legation to reach Washington for any further action by the President on the Treaty, as amended by the Senate— The Special and confidential Messenger returned by the Mexican Government to its Minister near that of the United States; left in the Mail Steamer for New Orleans a week earlier— The instructions conveyed by him to Genl Almonte: are ample and complete; to meet every contingency connected with the final acceptance and ratification of the Treaty as modified in the Senate; if amendments more Just and favorable to Mexico, in some of the exceptionable

<sup>1</sup> More likely on June 5, as stated in Gadsden's covering despatch.

<sup>2</sup> June 9, 1854.

<sup>3</sup> The full power to Almonte to effect the exchange, which is printed above, was dated January 3, 1854, only four days after signature of the treaty.

<sup>4</sup> Gadsden's despatch of June 9 was received at Washington on June 26.

provisions, cannot be obtained— A great derangement has been committed in the Boundary as altered by the Senate— While the changes do not remove materially the objection; to any acquisition of additional Territory (the difference not exceeding 2,500,000 acres of land)<sup>1</sup> it substitutes unintelligible lines of demarkation; with all the imperfections, as to frontier, protection; and with most of the impediments to an approved and practicable Thoroughfare within the limits of the U States for Travel and emigration from the Atlantic, to our possessions on the Pacific— These deficiencies in the Territorial limits, as defined by the Treaty of Guadalupe, and subsequently restricted by the Commissioner charged with the Survey and the establishing of them, originated many of the Border disturbances in the past, which had to be quieted: and must be a future source of frequent, and unpleasant difficulties between the Citizens and Authorities of the adjacent Countries— The ambiguity likewise as to where the line is to intercept the Colorado—and the discarding the advantages of a place of deposit at or near its mouth; must render nugatory, and of no avail the grant for the *free and mutual navigation of that River*— Whenever therefore that privilege begins to be appreciated by those forming *Settlements* in Utah, New Mexico: and the country intersected by: and attracting emigration to the Colorado and Gila; new issues must arise which will prove additional stimuli to future *Fillibustering* enterprizes; or will have to be arranged by Treaty, and on conditions not probably as favorable as those, which have been rejected; and which had secured the benefits of an unrestricted and untaxed outlet for our citizens to the Gulf of California and the Western ocean— The substituted Treaty however is most exposed to objections as reopening many of the National issues which the compact, which it supercedes, had settled; and in its want of *equality and reciprocity* in most of the provisions which are the only reliable Bonds of respect for International agreements— The weaker party imposed on; or forced without consultation to acquiesce in conditions offensive and humiliating; will not recognize the obligations to observe or regard them—when change of circumstances would authorize and justify repudiation— The free Institutions of the U States; and the progress of their respective Governments in Civil and Religious liberty; can promote harmony of Federal relations abroad; by the same example alone, which preserves it among different Sovereignities, under a common bond, at home— Assumed National Supremacy and abuse of power acquired through a free and enlightened commercial policy, is as obnoxious to our admirably poised Government which seeks similar harmony of associations with foreign powers; as could be centralization of usurped prerogatives at Washington to overawe the Independent Sovereignities of our domestic political household— Having been influenced by these views in the negotiations conducted through high official responsibilities with Mexico. I feel it due on this occasion to myself: and to the character of the Government I represent, to record my dissent to the exclusion and changes made by that Honorable Body in the provisions of a Treaty under adverse and opposing influences, which are well designed to impair the relations which it is the policy and interest of the United States to preserve with her nearest neighbour— This Legation has already since my return been much pressed and importuned by American Citizens claiming indemnity from Mexico for wrongs inflicted— As these cases were numerous on the docket, had been urged by Predecessors on the consideration and Justice of the Mexican Government; and provision made in the late Treaty for their examination and adjudication by a *Competent Tribunal*. I shall defer, for the special instructions of the State Department; any further notice or essay to protect them—

For further comments of Gadsden (January 5, 1855), see Manning, *op. cit.*, IX, 739–40.

In an instruction of October 13, 1854, Marcy thus commented on Gadsden's statements in the quoted despatches (Nos. 31 and 32) of June 9 and 17 (D.S., 17 Instructions, Mexico, 20–25, excerpt; in full in Manning, *op. cit.*, IX, 167–69):

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<sup>1</sup> The difference is about 7,218,350 acres.

The unusual pressure of business upon the Department near the close of the Session of Congress, and other important matters claiming my immediate attention, since its adjournment, have delayed my reply to several of your despatches.

I do not propose to discuss the relative merits of the Treaty with Mexico in the form it was negotiated by you, and in that which was afterwards given to it; but I cannot pass without notice some of the objections presented by Mexico to the Treaty, not merely because she had raised them, but because you express your full acquiescence in them.

In some of your remarks I entirely concur, but to others, I feel bound to express my dissent. In regard to the points to which the latter refer, I hope that upon further reflection, you will see cause to modify your views.

I regret, as sincerely as you do, that the Treaty does not contain a provision for the adjustment and satisfaction of the claims of our citizens against Mexico. Such a provision was due to the claimants, and it would have relieved the Legation and this Department from most difficult and embarrassing duties.

I am not disposed to question the accuracy of your views in regard to the boundary line, but rather to concur with you in the opinion that the line agreed upon by the negotiators is preferable to that arranged by the Senate. But there are other objections urged against the Treaty with which I cannot agree, and still less can I assent to the startling inference from them, that "any change of circumstances would authorize and justify repudiation" of it by Mexico. Among the objections urged by Mexico against the Treaty are the following:—

*First*, that "it is deficient in all the higher and binding requisites of international agreements"—"not reciprocal, but onerous and offensive to the weaker party in all its provisions."

*Second*, its want of *equality* and *reciprocity* in most of its provisions:—

*Third*, "that it is particularly exceptionable in the 8<sup>th</sup> Article."

Not being able to perceive that these, as well as some other objections to the Treaty urged by the President of Mexico and his Minister of Foreign Relations, were well founded, I could not but regret that they have made so strong an impression on your mind as they appear to have done, and that you "felt deprived of both the will and ability to urge any considerations in favor or justification" of it.

It would certainly have a very injurious effect upon our relations with Mexico, and diminish the chances of having justice done to our citizens who have a large amount of well founded claims against that country, if these high functionaries should become impressed with the opinion that this Government entertained views in regard to the Treaty similar to yours, as expressed in your despatches Nos. 31 and 32.

There is not, according to my best judgment, "a want of *equality* or *reciprocity* in most of the provisions" of the Treaty; nor in making it was Mexico "imposed on, or forced without consultation to acquiesce in conditions offensive and humiliating." All the circumstances considered, I regard it an advantageous contract for the Government of Mexico. The United States paid a liberal consideration for the grants and concessions they obtained. I confess that I am at a loss to conceive what there is in the transaction to sustain the allegation just quoted. Mexico was as free to accept or reject the amended Treaty as that which you negotiated with her.

It surprises me that Mexico should have thought of raising any objections to the 8<sup>th</sup> Article. It could not have occurred to the President of Mexico, or to his Minister of Foreign Relations, when they suggested such an objection to you, that a Convention had been made by the Mexican Government with your immediate predecessor in regard to the very objects embraced in that Article. That Convention was obnoxious, not only to every objection which can be urged against the 8<sup>th</sup> Article, but to objections still stronger; yet Mexico was exceedingly anxious to procure the concurrence of the Government of the United States in that instrument. Her Minister here called on me several times and urged the adoption of that Convention. Under these circumstances I cannot but regard the objections to the 8<sup>th</sup> Article as captious on the part of Mexico.

Though the Treaty does not embrace all the objects this Government or that of Mexico desired to adjust, it is not less obligatory on both parties on that account, in regard to such objects as are included in its stipulations.

Although you have felt it to be your duty to record your "dissent to the exclusion and changes made by that honorable body [the Senate] in the provisions of the Treaty," negotiated by you, the President is confident that your individual views in this respect will not abate your zeal or efforts in urging upon Mexico the scrupulous fulfillment of the obligations imposed by it in its present form.

As the Treaty has made no provision for the satisfaction of the claims of our citizens upon Mexico, her obligation to adjust and pay them exists in the same force it did before it was concluded; and it is expected that you will urge the Mexican Government to adjust such of them as are of a character to justify the interposition of the Executive authority of the United States. This Department has, heretofore, indicated to you, or to your predecessors, such as were deemed proper to receive the attention of the Legation. These you will earnestly press upon the attention of the Government of Mexico. You will, as new cases arise receive further instructions in regard to them.

### THE NEGOTIATIONS

James Gadsden, of South Carolina, was appointed Minister to Mexico on May 24, 1853 (this was a recess appointment; his second commission, after confirmation by the Senate, was of February 13, 1854). The first instructions of Secretary of State Marcy to Gadsden, then at Charleston, regarding negotiations with Mexico, were dated July 15, 1853 (D.S., 16 Instructions, Mexico, 389-413); while lengthy, they were not on all points definitive; their text follows:

The relations between the United States and Mexico are in an unsettled state. There are several questions now pending between the two countries of grave importance and conceded difficulty; and it is apprehended that you will find the government and people of Mexico not favorably disposed to a fair adjustment of them. The hostile feelings engendered by the late war with Mexico imbibited by the severe wounds inflicted on her national pride have not wholly subsided; and it is feared that the degree of irritation yet remaining will embarrass our negotiations with her. It is the earnest wish of this government to cultivate friendly relations with that Republic, and you are requested to impress this sentiment upon the government and people of that Country in the most effective way; and, if it be possible, to inspire them with a reciprocal feeling towards the United States.

The President is determined, in treating the questions of difference with her, to take a liberal course. While insisting upon our own rights he will be careful to respect the rights of Mexico. When our fair intentions towards her, and our sincere desire for amicable relations and a free commercial intercourse are manifested, it is hoped that all existing prejudices on the part of Mexico will give way; and that you will be enabled to accomplish the objects of your mission in a manner beneficial alike to both countries.

During the last administration, this Government interested itself in behalf of the assignees of a grant made by Mexico of the right of way from the Atlantic to the Pacific across the Isthmus of Tehuantepec. The privileges of the original grantee had passed by assignment to citizens of the United States. A deep interest was felt by our people generally in the object of this grant, and our government interposed to give it effect. It has urged Mexico to respect the rights of the present proprietors of the Grant;—but she has denied the validity of that grant, and by a formal decree of her legislature declared it null and void. There is in the archives of the Legation an extensive correspondence on the subject, which will enable you, should it come up for your consideration, to understand the condition of that question. It is not proposed to instruct you at this time to resume this negotiation. Should the President hereafter conclude to do so, his views will be fully made known to you.

Within a few months past the Mexican government has made another grant<sup>2</sup>

<sup>1</sup> The brackets are in the source paper.

<sup>2</sup> The Sloc Grant.

of the right of way through the same route. The latter grant is in direct conflict with the former one, to Garay. Our Minister at Mexico, your immediate predecessor, without instructions from his government entered into a convention<sup>1</sup> guarantying protection to the latter grant, and has transmitted it hither for the purpose of ratification. Any favorable action by the President on this convention would seem to imply an abandonment on his part of any further attempt to induce Mexico to respect the rights of the assignees under the Garay contract. You are not authorized, therefore, to give any assurance to Mexico that this convention will be approved by this government. The President is not yet prepared to announce the course he may deem it his duty to take in regard to the Garay grant or the proposed convention for the guaranty of the one recently made.

I will now direct your attention to a very serious difficulty which has arisen in relation to the boundary line between the United States and Mexico. The part of the line, in regard to which the dispute has arisen, is that along the southern boundary of New Mexico. The first question to be settled is, whether this line has been actually traced by the boundary commission according to the provisions of the Treaty of Guadalupe Hidalgo of the 2<sup>nd</sup> of February, '48. The mode of running and marking the line between the United States and Mexico is clearly prescribed by the 5th. Article of that Treaty. That article provides a commission for that purpose. Each government is required "to appoint a commissioner and "a surveyor, who shall meet at the port of San Diego, and proceed to run and "mark the said boundary in its whole course to the mouth of the Rio Bravo del "Norte. They shall keep Journals and make out plans of their operations; and "the result agreed upon by them shall be deemed a part of this treaty."

The language I have quoted clearly requires that, not only the commissioners appointed by the two governments, but the surveyors also, must concur in the result before the line run and marked will become a part of the Treaty—that is—the fixed boundary between the two countries. They *all* must agree in the result. The Commissioner and Surveyor appointed by each government are its agents, and are to act in this business, in conjunction with the Commissioner and Surveyor of the other, and their determination all agreeing, is necessary to establish the boundary line, and nothing less can do it. This was not a board which could decide any thing by a majority of votes. Two could conclude nothing when three only were present, nor could three concurring in opinion, do a valid act in the absence or without the concurrence of the fourth. This was evidently the view of the matter taken not only by the American Commissioner, but by the Mexican Commissioner and Surveyor, at the time this part of the line was under consideration. Hence the great anxiety to have the American Surveyor concur in their opinion in regard to the initial point. The fixing of that point has never been concurred in by the American Surveyor. Mr. Gray who held that position was not present when the initial point was attempted to be fixed, and as soon as he was informed of what was proposed with respect to it, he declared his dissent, and clearly exposed the error. Lieutenant Whipple who, until the arrival of Mr. Gray, acted as Surveyor under a void appointment from the American Commissioner, also thought it was a mistake to fix that point at 32°22', but his concurrence, had it been given in the most formal manner, could be of no avail for he was not a Surveyor. Mr. Bartlett, the American Commissioner had no authority, nor the colour of an authority, to appoint a surveyor, and this was well understood at the time by the Mexican Commissioner and Surveyor. As to the mode of appointing these agents to trace and mark the boundary line the Treaty is clear and explicit. "The two governments shall "each appoint a commissioner and a surveyor" &c. The government of the United States had nothing to do with designating Lieutenant Whipple. Mr. Gray the first appointed surveyor on the part of the United States was the incumbent of that office when Lieutenant Whipple was designated to act as Surveyor—but if it had been vacant Mr. Bartlett had no power to fill it. Mr. Gray was superseded by Colonel Graham. No sooner did Colonel Graham look into this matter than he discovered the error in regarding 32°22' as the true initial point on the Rio Bravo del Norte, and not only refused to give his sanction to it, but showed conclusively that it would be a palpable mistake to fix it there.

<sup>1</sup> Of March 21, 1853 (D.S., Unperfected J2).

He was subsequently removed and Major Emory put in his place as American Surveyor, but Major Emory never concurred in fixing the initial point, at the place selected by the two Commissioners and the Mexican Surveyor. He afterwards merely certified the fact that the Commissioners had fixed the initial point at 32°22'. An attempt has been made, and may be repeated, to pervert this certificate into a distinctive act of approval, but it was not so regarded by Major Emory nor can it justly be so regarded by any one.

I have gone into this detail of the proceedings in regard to the initial point to show that it has not yet been fixed, according to the requirements of the Treaty, and notwithstanding all that has been done in that matter, the United States can fairly consider the Southern line along the Territory of New Mexico yet unestablished. I hope you will find the government of Mexico disposed to acquiesce in this view of the subject.

I apprehend that Mexico may be the more tenacious in holding on to the erroneous line in consequence of the opinions and action of the late Secretaries of the Interior and of the State departments on this subject. They both appear to have approved of the course of our Commissioner—or at least to have been disposed to acquiesce in his decision and to regard it as obligatory upon the United States.

It is quite natural that Mexico should attach more importance to the acts and opinions of these members of the late administration than can be properly ascribed to them in a matter of this kind. By recurring to the treaty, it will be perceived that the Executive department of the respective governments had no control over the conduct of the Commissioner and Surveyor appointed by them, nor was there reserved to either the duty or the right to approve of their proceedings, and no approval or sanction by either or both is required to give them validity. The boundary commission was placed beyond the power of either Mexico or the United States, while acting in good faith in the matter committed to them by the Treaty. Their decisions, when made conformably thereto, were valid and effective to bind the two governments without the approval of the executive department of either, and, when not in conformity to the Treaty, such approval could give them no validity. Whatever may have been the opinion of the Secretary of the Interior or any other Secretary, or of even the President, upon the acts of the American Commissioner, those acts are not now the less open to question as to their binding effect on the United States. Such approval no more corrects an error, if error there be, than a like Executive approval would correct an error committed by any judicial tribunal of the United States. If indeed there had been an explicit approval by the late executive officers of the decision of the American Commissioner on the initial point, inasmuch as that decision was not made by competent authority and was not a matter at all depending upon executive sanction, the President is in no way released from his duty of seeing that the boundary line has been run and marked by those who were selected for that purpose, and he cannot without disregarding that duty, acquiesce in a line which has not been thus established.

However desirable it may be to Mexico to have the line she now claims recognized, I think she will not contend that a line which has not in fact been run and marked by the Commissioners and Surveyors of each government is to be regarded as established according to the requirements of the treaty. You will therefore urge upon Mexico as the view of this government that the line along the Southern boundary has not been established in the way required by the treaty and obtain her consent, if it can be done, to have it thus run and marked.

That the line claimed by Mexico has not been run and marked in the only manner it could have been run and marked, according to the Treaty, is very clear, and it is equally clear that in tracing it the provisions of the treaty have been strangely disregarded. Instead of giving the whole of New Mexico to the United States as was the obvious intention of the negotiators of the Treaty, and as is clearly expressed by the language they used, a large district of that Territory is cut off by the Commissioners' line. Their line is thirty-four miles too far north, and, by regarding it as the true line, a district of country of that width along the whole southern extent of New Mexico would be lost to the United States. If the boundary commission had established, in the manner prescribed by the Treaty, a line so variant from the one intended by the parties it can hardly be supposed

that the party which had thus obtained an accidental advantage would insist upon holding on to it; but the question is not presented in that aspect, for the line in question, as I have shown, has not been run and marked in the mode required by the Treaty.

It will appear by an examination of the 5th Article that the true initial point is only a few miles (probably about eight) north of the Town of El Paso—that the error (hardly excusable) has occurred by disregarding the Map referred to in, and made a part of the treaty, and substituting for it the figures on its margin—placed there to indicate the parallels of latitude.

I do not propose in this communication to reproduce the arguments which have been put forth by the American Surveyors and in the Senate of the United States, showing, as I think they do, conclusively, the error of the commissioners, nor shall I on the other hand discuss those which have been adduced to sustain the line claimed by Mexico. You will be furnished with them; and should it become necessary for you to present to Mexico, the views of your government on this point, you will have ample means in your possession to sustain them. The treaty furnishes a basis of an argument—indeed it is in itself an irrefragable argument for the line claimed by the United States. Mexico ought to be willing, as the United States are, to have the line run and marked in the mode designated in the treaty and to acquiesce in the result. Until it is thus run and marked she ought not to expect acquiescence on the part of this government, in that which she now claims upon no better ground than a mistake, and which if allowed would sever from New Mexico a large district of country which was a part of it when the treaty of Peace and Limits was made, and has ever belonged to it.

While this dispute as to the southern boundary of New Mexico remains unadjusted it is expected that each party will abstain from taking possession of the district in question or doing any act which indicates an exclusive appropriation thereof to itself. The late Governor of New Mexico it seems entertained an intention of taking actual possession of it and so announced his purpose in a proclamation; but at the same time he declared that he was acting in the matter without instructions from his government. His intention was never executed, his purpose was disapproved, and Mexico has been distinctly apprised that the United States will abstain from taking possession of the disputed territory in the belief that the difficulty will be settled by negotiation, and this government expects that Mexico will on her part take the same course. Should she however contrary to our reasonable expectation have acted otherwise you will urge upon her the propriety and reasonableness of the proposition of this government, and insist upon her acting in conformity to it. Our proposition is that the district in question should be left precisely in the situation it was when the dispute first arose until all efforts to adjust it shall have been exhausted. I cannot doubt that Mexico will conform to this suggestion.

I will now direct your attention to the second paragraph of the 6th. article of the Treaty of Guadalupe Hidalgo with a view to a subject which is deemed of great importance to both countries. By that clause in the Treaty you will perceive that either party wishing to construct a canal or rail-road along the Gila River may, under an agreement, use for that purpose the bank on either side of that River to the extent of a marine league. It was contemplated that a canal or rail-road should be constructed near this boundary and neither government can be unapprised of the vast importance to both of such a work. A canal from the Rio Grande to the Pacific through that route is now considered impracticable. A better knowledge of the country in the vicinity of the Gila has demonstrated the great difficulty,—not to say, impossibility—of constructing a rail-road along its banks or within the space on either side mentioned in the Treaty; yet a very eligible route for such a road is found at a further distance than a marine league on the Mexican side of the line but not on the American side of it.

In view of the many advantages Mexico would derive from such a road it is presumed she would readily accept of a proposition to alter the boundary on that part of the line and cede to the United States such a strip of country as may be necessary to bring within our territory a feasible route for such a rail-road. It is difficult to tell, without an actual survey, the extent of the alteration required for such a purpose. It would be important particularly to the interests of Mexico that such a rail-road should connect with the navigable waters of the Gulf of

California. For this purpose it is desirable that the true line—as we contend—the line commencing on the Rio Grande a few miles north of El Paso—should be continued for a considerable distance west beyond the treaty line, then run South about 30' and then again west to that Gulf. Should Mexico be unwilling to make so large a cession of country as such a line would require she might agree to have the line on the Southern border of New Mexico continued until it shall strike the River San Pedro and thence down that river to its junction with the Gila. It is believed that if the United States could acquire this latter line they would then have within their territory a good route for a rail-road.

If you should find a disposition on the part of Mexico to treat for either of these lines or indeed any other, in order to give the United States a practicable route for a rail-road, no time will be lost in getting such information of the Country as to make it sure that the United States shall accomplish the sole object they have in desiring a change in the treaty line on this frontier—an eligible route for a rail-road.

Not knowing what extent of country would be required I cannot inform you at this time what consideration this government would offer for such a cession. The country which would, by such a change of line, fall within our limits, is not as I understand much settled nor is it at all inviting to settlers; it is therefore presumed that it may be acquired for a moderate sum. You will, at as early a period as practicable, embrace a fair occasion to bring this matter to the consideration of the Mexican Government, and should you find that it can be induced to treat on this subject you will notify this department.

Herewith you will be furnished with a copy of a map<sup>1</sup> made by A. B. Gray, Esquire, the American Surveyor of the Boundary Commission, as it was first organized. By this map you will be able to designate with some degree of accuracy the section of country which is desired for facilitating the construction of the Rail-road to the Pacific.

The suggestion for increasing our territory in the way proposed for a special object—and that object one in which Mexico is deeply interested, and one too contemplated by the Treaty of Peace and Limits with her,—will not I trust be misinterpreted, and cannot therefore wound her national pride. She ought not to suspect any sinister design on our part for she must know that such a road will be a very expensive work which our government would not patronize, nor our citizens embark their capital in to the amount of many millions, if in any part of the way it were to run through a foreign territory.

Should you find Mexico disposed to treat for a new line you are instructed not to press a discussion of our claim—after having clearly stated it—for the disputed territory. It is probably the expedient way of disposing of that question to let it be merged in the negotiation for an alteration of the boundary. With this negotiation for a change of the line it may also be proper to embrace the settlement of the claims of our citizens against Mexico and the pretended claims of her citizens against the United States arising under the 11th Article of the Treaty of Guadalupe Hidalgo. In these general instructions it is not proposed to give you the views of the government of the United States upon any of these respective claims. You will find much in the archives of the Legation at Mexico in relation to them. In the instructions to your immediate predecessor you will find the position laid down—and I am inclined to think correctly laid down—that neither Mexico nor any of her citizens have really any claim upon this government for not having fulfilled the obligations imposed upon it by the 11th Article of that treaty, and yet previous to that time and also in those very instructions our minister was authorized to offer several millions for a release from the obligations imposed on this government by that article and to quiet the claims under it. The government of Mexico seems to have considered the stipulation on the part of the United States an absolute engagement on our part to restrain all Indian incursions into its Territory—and when they do take place, to pay all damage resulting from them—but there is as you will perceive by that article a very important qualification to the undertaking by this gov<sup>t</sup>. The United States are only to restrain these incursions “in the same way, and

<sup>1</sup> This map, not now available, was sent to Gadsden with an instruction of the next day, which is cited below.



with equal diligence and energy, as if the same incursions were meditated or committed within its own territory, against its own citizens." This government has, as it can show, used the diligence and energy promised towards the accomplishment of the objects specified, and thus discharged its obligations to Mexico in this respect. Since the treaty with Mexico of the 2<sup>nd</sup> of February 1848, a considerable part of our military force has been stationed along the Mexican frontier, and almost exclusively employed in keeping the Indians in order and restraining incursions into Mexican territory. That better success has not attended our efforts, and all incursions prevented, is in a great measure owing to the entirely defenceless condition in which Mexico has left her whole frontier. She has, as we understand, employed very little or no force in protecting it, and the sparse settlements along the line have not been in a condition to defend themselves. The weakness of the Mexican border,—the consequence of the neglect of the duty of protection,—has invited incursions and opposed no obstacles to extensive depredations. It would be singular indeed if the United States could be held liable to indemnify Mexico or her citizens for injuries which she invited or at least might have prevented, and in virtue of being a government was bound to her citizens to prevent. The President approves of the position taken in the instructions to your immediate predecessor that the United States has fulfilled the obligations contained in the 11th. Article of the Treaty of Guadalupe Hidalgo. If this subject is pressed upon your consideration it will be proper for you to present the foregoing views to the government of Mexico. While we deny the justice of the claims on account of the infraction of that article we admit that it imposes serious obligations upon this government from which it would gladly be released. You are therefore instructed to ascertain whether there be on the part of Mexico a disposition to enter into an arrangement embracing a final adjustment of all the matters to which I have alluded, viz: a new line giving to this government additional territory for a feasible route for a rail-road;—a release from the obligations of the 11th. Article of the Treaty of Peace and Limits;—and a settlement of claims upon the respective governments by the citizens of each. For such an adjustment the United States would be willing to pay liberally. The sum which has already been offered for the two latter objects ought to be satisfactory for all; it might however, be considerably increased if the proposed new line could be embraced in the settlement, but the amount claimed by Mexico for damages under the 11th. article of the Treaty is so exorbitant that it can hardly be believed she expects any thing like it will be acceded to. The claims of our citizens upon Mexico will hereafter be presented to you more at large with further instructions for arranging them. As soon as you can ascertain the general views and expectations of Mexico on these several subjects you will communicate them to this Department and if there be a fair prospect of coming to any conclusion thereon you will be furnished with more definite instructions.

An important object of your mission is to place the commercial intercourse between the two countries on a better footing. The unsettled condition of affairs in Mexico for many years past has very much diminished our trade with that country. The constantly occurring political revolutions there rendered commercial intercourse unsafe; the frequent changes in her tariff and the severe penalties for the non-compliance with it,—even when imperfectly promulgated—was vexatious and often ruinous to our merchants. The Department is not accurately informed of the recent changes which have been made in the laws regulating her foreign commerce; nor has there yet been time to show how the present system will affect her foreign trade. You are directed to furnish this government with early information not only in regard to the system but its operations. You will make known to Mexico the desire of the United States to establish with her intimate commercial relations on liberal terms. Such relations would in every respect, be advantageous to both countries.

In the foregoing instructions the proposal directed to be made for the maintenance of the *status quo* in the disputed area of the frontier was definite; otherwise Gadsden was authorized merely to ascertain and report "the general views and expectations of Mexico" on a

cession of territory for a railway route, a release from the obligations of Article 11 of the Treaty of Guadalupe Hidalgo, and a settlement of claims of the citizens of the two countries; a "final adjustment" of these matters was in mind, but a global adjustment seems not to have been in contemplation, for the policy in respect of the Garay and Sloo Grants was expressly reserved, and the general words regarding American claims are not to be read as including any claim of the holders of either grant.

On the day after the date of the instructions Marcy wrote to Gadsden that he was retaining them until July 18 in order to "submit them to the President who has not yet, by reason of his absence examined them" (D.S., 16 Instructions, Mexico, 413, July 16, 1853). Doubtless President Pierce gave his approval before transmittal; but one must doubt that those instructions had been discussed in Cabinet; in the matter of the extent of territory desired Marcy had written that "the sole object" of the United States in seeking a change of boundary was "an eligible route for a rail-road"; the views of Jefferson Davis, then Secretary of War, very influential in the Cabinet of Pierce, and an intimate friend of Gadsden, were expansionist, as shown by the line proposed by him in the Senate on March 6, 1848 (Executive Journal, VII, 322-23; this was during consideration of the Treaty of Guadalupe Hidalgo, charted in Paullin, Atlas of the Historical Geography of the United States, plate 94A); and the later instructions were of a quite different tenor.

Gadsden presented his credentials to Santa Anna on August 17, 1853, some days after his arrival at Mexico City; and in his despatch of that date he wrote (D.S., 18 Despatches, Mexico, No. 1; Manning, *op. cit.*, IX, 600-601):

I was gratified at your having suspended for the present, all instructions on the Hargous and Sloo Grants, as I am satisfied that those private claims, should not be permitted to interfere with the more important public matters of the adjustment of Boundaries: and of getting exonerated, from the responsibilities of the 11<sup>th</sup> article of the Treaty of Guadalupe.

Gadsden was soon besieged by American claimers; two weeks after his official reception he thus reported (D.S., 18 Despatches, Mexico, No. 2, August 31, 1853, excerpt):

I have found the duties of this Mission for the brief period they have devolved on me very onerous: and greatly complicated by the multiplicity of private claims which had engaged the attention of my Predecessor; and of *many others*: of which I have had the intimation are soon to be presented for examination and advocacy— The practice which seems to have attained at this Mission— Whether from personal sympathies towards supposed aggrieved fellow Countrymen; or from an erroneous sense of official obligation to receive, and advocate private claims, before they have passed the examination: or received the confirmation: or condemnation of a Tribunal of first resort, has transformed the Minister into a mere Counsellor and Attorney at Law—

It has exercised, in my Judgement and therefore it is that I have brought the subject to your notice: a very *injurious* and *suspicious* influence on the higher relations between the Representative of our Government, and those who are charged with the responsibilities of the other, where he is accredited—

It has already gathered around this Mission a swarm of importunate and complaining sufferers: and who seem to be increasing in a Geometrical ratio, as

fortunate Predecessors have been recognized and relieved in the ratio arithmetically— On the present occasion there are indications exteriorally of a multiplication of these claims to a fearful extent: under an expectation that the Government at Washington is well advised of their existence, and that liberal provision will be made for their payment in any new treaty of adjustment, which the Minister may have the good fortune to conclude— You may thus recognise the embarrassments which even American Citizens, may thus throw in the path of an early and satisfactory adjustment of the pending issues with the Government of Mexico—

There seems therefore a propriety and even necessity: of a discrimination to be made between the private claims of Individuals, which should demand the interference of Ministers: and those to be adjudicated by authorized Tribunals: and what class of even these, so disposed of involves the responsibility of Ministerial interposition— I should be pleased to have the views of the Attorney Gen<sup>l</sup> of the U States on this subject; not as a matter of possible relief to myself, but as to the appropriate Ministerial Relations to be maintained with the Government where accredited—

From the outset Gadsden had stressed the “extremities of the [Mexican] Treasury” (despatch No. 1, of August 17, 1853, cited above); on September 5 he wrote his impressions and views at length in an unsigned private paper (perhaps sent to the President) which was surely <sup>1</sup> at Washington some time before the instructions of October 22 (printed below) were framed and may well have been of influence thereon; so far as the records show, this was the only significant communication from Gadsden that could have had such influence. The text follows (*ibid.*):

Memoranda of Facts: and Speculations on the past present and probable future condition of Mexico—

The History of Mexico since its independence of Spain has been a narrative of Revolutions— They have been so frequent: and so little productive of important results as to scarcely merit the name— From the changes which have followed in quick succession; The French *Emules*; are more applicable—

The Government of the Vice Roy: was one of *power absolute and obedience implicit*.— No Individual dreamt of resistance; and for so many centuries had the system of resignation and submission to Church and State: been recognized; as to become a habit which no example: or time has inspirited the People (if there be such a Class in the Population) to shake off— In achieving a triumph over the power which emanated from Madrid: it was only with the design of substituting one equally as *strong* and of its own creation at home— Independence of Spain was all that was accomplished in 1822 or 23— An Iturbide was a mere instrument in the hands of the Triple Alliance; between *Church*: the *Old* or Native *Spaniards*; and the *Creoles*, to carry out their behests— This change effected: The Command of this Vice Roy Power; soon became the bone of contention: among those who had by union alone, rescued it from Spain— There was no portion of this combination; that had the least glimmerings of *political equality*, and *liberty* or of the knowledge of *self Government*— The few who had read the history of the U States, and been inspired by its success; had not the early Anglo Saxon education into the Arcana of Constitutional Liberty; and hence thought that in uniting to cast off the Spanish Yoke: they had achieved what they aspired to— Unlightened themselves, they have been unable, after an interval of 30 years; to enlighten others on the principles of originating; establishing; and perpetuating Free and Representative Government— The Revolution therefore of the Tripple alliance has been to divide the governing interests into Three (3) Parties or Factions—The Conservative, or old Monarchical influence consisting of the Church: and the largest portion of the old

<sup>1</sup> The date of receipt is not indicated.

Spanish Inhabitants—The *Moderates*, or as sometimes called the Constitutional or Federal Party—and the Poros: the extreme of democracy, under the delusion of acquiring an influence through the Indian & Mixed Races; misnamed the People; and which have about as much influence on the Government, as our Affrican Slaves— They belong to the Church— The Poros proper are a mere faction; that coalesce at times with the moderates; but whenever in power: distract through the Legislature; and in the end contribute to upset those who they at first united with— The Government therefore: and which power alone can sustained, has introduced an essential element the Army—which becomes the instrument, in succession, of upsetting every ruling power; by enlisting in the service of every disaffected party or faction who can pay *best*; or with *certainly*— For the Army, as strange as it may seem, is the least ambitious or avaritious portion of this strange Community—and very subservient to those who meet out their regular pay and rations— The Materials of which composed are the most controllable Race; I have ever met with— Give them punctually their 2 or 3 Reals a day; their clothing, their Tortulas; and their Chocolate: with a Glass of pulque and you find no aspirations among the rank and file to be promoted— They have but one instinct: to adhere to those who administer to their Comforts, and wants.

The Predominant power hower is still in the Priesthood and the Church: and for the reason: that they are in possession of 2/3 if not 3/4<sup>th</sup> of the productive or available property of Mexico—and can alone on emergencies raise the amount necessary: to stimulate or suppress a revolution— Though openly and avouedly in favor of a Vice Royalty of their own Creation; the slumbering element of that Mexican phanton, Liberty, and the Constitution, has still been so strong as to prevent their confirming that absolute sway on Any: who in the frequent changes here they may have placed in power— The Government of the day; like the Vice Royalty of old; has become an odious monopoly: held together by the cohesive influence of plunder: and for which each faction, in succession is contending— All the old system of extortion from the Masses; for distribution among those who can hold the control: is in full force—and a regular bargaining for the spoil—*Is the Government*—while there is enough to satisfy the hungry digestion of those who claim a share: and to keep the army true: the adverse public sentiment is overawed; and for a time the Car of State moves on in proportion to the supply of steam to the political Locomotive— But when this fails the signal of revolt is raised— There are constant elements for contention and strife at work in this truly distracted Mexico— The fires of discontent smothered; but not extinguished; and ready to burst into a flame whenever fuel is supplied— Like the realities which too frequently lay our Cities in Ashes, These are ignited by a every *breeze*, without an *object*; and in their turn destroy those who have fanned the elements into a Rage— Every Revolution or Change has been the foreshadowing of another in embryo, and made with so little design; that the alternations are in harmony with the rebellions of a College: because Masters & Professors hold the Rod— Money the object, is the controlling power— It effects changes—and is essential to the preservation of those who by it are placed at the helm

The Moderate party sincere in their political objects: and most exempt from individual selfishness; would be pleased to take the U States as a guide—but they are incapable of comprehending the elements and strength of our system— Like a Ship at Sea; and with a mutinus crew below; when single and alone on reaching the quarter deck, they are without a helm,— The numerical strength: and the monied power: the *Priesthood* and the *Monopolists* are all in opposition— Though by the Civil distractions and political ebullitions of the day: they find themselves at one period on the surface; Another month or year places them at the depths below: of the ever revolving currents of anarchy, and discord— If supported in power, or could command the revenue which would secure power: they would in time accomplish the political redemption of this otherwise truly favored land—

The last Emute; which has placed Santa Anna at the head of affairs; was in character with those which had preceeded— It did not originate with the old party of Santa Anistists;—now almost extinct—but from a *fretful* discontent in the Legislature; in want of revenue; and who would not support the President—

Arrista rather than proving treacherous to the Constitution; by dissolving the Legislature and throwing himself into the hands of those who would have given him the means, preferred to abdicate— Cervillos; the Supreme Judge of the Court filled Constitutionally the vacancy, but in the condition of his Predecessor Could do nothing— The Army was made use of to place General Lombardini, as the *locum tenens* of the power which should prevail— The Army was then influenced to declare for Santa Anna; but the other interests came in gradually and reluctantly— The Republican & Puros: remained quiet—never acquiesced—holding themselves in reserve for Another opportunity in the turning of the wheel—

Santa Annas: position therefore is one of power: and can only be maintained: by a Military force— Hence his policy has been to strengthen his army; and has to resort to conscription to fill its ranks—and to quiet them by the accustomed pay, cloathing; and rations— To accomplish this he has thrown himself into the hands of the Conservative; & monied power— Thus far he has raised a sufficient force, to give to each City the appearance of a garrisoned Town— Here the show is largest— Ten Thousand the estimated force: and parades on the squares & exhibitions in the Street frequent— The Ministerial Residence is not overlooked—and the Minister enjoys the opportunity of a daly inspection— The first organization was for 90 to 100000 Thousand— The Secretary of War has been forced down to 45000: of which not to exceed 30,000 are as yet embodied— As the Revenues have fallen below expectation: and the late Minister of Finance reports 17 millions deficiency for the year—and has retired, as is well understood from disagreements in the Cabinet: on the measures of replenishing—it is probable that the other, and expected sources of private supply have failed.— One of the projects—to borrow the Credit of the Church was instantly rejected—and that predominating influence remains quiet; and can only be made to disgorge by force— The President is not the man to attempt it—and as threats have been tried without effect; it is most probable that the Church has no apprehensions— The Monied Men have all their accumulations in safekeeping— Many it is thought availed of the last Conducta to place their funds beyond the grasp of violence— The Conducta had 4 millions: and smaller shipments of Gold & Silver is going off to the U States; by every opportunity— This class of the Conservative interest: have no idea of being taxed— They are the great sharers in the spoil party: and go for a division of the plunder: and though able to raise any amount; they dont comprehend the policy of sustain the power, that manufactures the spcil—

The Presidents high qualities—are—First selfishness—and an inordinate love of money without restraint— He has no lofty ambition: for he has the position now to gratify it— All his policy in the Government of the State: is directed to the taking care of himself— In Common language but expressive—“To make Hay while the sun shines”— All his Counsellors and advisers have the same instinct to take care of self in plundering others— They cannot be made to appreciate any other rule of action— They consider Americans as peculiarly influenced by such motives, and have no more trust in an American Ministers coming here to represent his Countrys interest, than they have in Santa Anna' resuming political power: or in their sustaining him: but under a coporation and fraternization; on a division of the Public spoil: *domestic* and *foreign*—

*Second* The President is said to be *treacherous*, and that he is capable of sacrificing friends to the higher quality selfishness— Hence the Party of Santa Anistists has disappeared— Its members absorbed in the other parties—most of them in communion with the Moderates—and for the reason that they have been sacrificed by the President in his efforts to coalesce with the stronger party of Conservatists— These however distrust; and will be cautious; for the cause; which has occasioned the dispersion of the Santa Anistists— His treacheroury has destroyed a party which he once could rely on; and has not as yet, conciliated another which has a greater ability to serve and protect— If they could be induced to confide and aid to the extent of their means: Santa Annas power might be consolidated & established for a time— But not having come as yet to his Cordial support; his position is becoming weaker daly; and whenever the means of subsisting and of enlarging his Army: falters; it will be the signal of an outbreak; and the force he has raised; employed as the instrument of his dis-

truction— On the suspicion that the one thing needful is failing—Spasmodic symptoms of a new Emute has excited alarm— At least the Government has given evidence in the arrest of Col Robles, and his person confided to a guard that left the City the same evening— He is a Moderate: of intelligence: Firm as an Officer of Engineers: and said to exercise a powerful influence over the Regiments of Sappers & Miners— The one stationed in this City was sent to Chihuahua; simultaneously with his arrest. An edict of exile or rustication was issued against others on the same day— Among these Rosas (the former Minister to Washington) and his family— Many others have received intimations to take leave—and the late Minister of Finance is watched with a suspicious eye— There is no information at present more reliable than that the elements of disaffection are at work—preparing to avail of the first favourable opportunity to dismiss the present dynasty— The want of organization under an efficient leader may delay the move—and hence the probable arrest of those to whom the disaffected were turning— A storm is certainly brewing; whether it will appear on the horizon and with what effect remains to be seen— At Puebla & Jalappa: demonstrations have been observed, and the Late Governor of the first place is under arrest— The President, is reported as Revengeful: Tyrannical: and blood thirsty;—without the nerve to exercise; even where the Military power to execute is at hand— The fate of Iturbidie is supposed to admonition:— What he most dreads is retaliation— It is the common language among friends (and which explains his seclusion surrounded by aids & a Guard) that this is the Presidents last chance; that if he now betrays his country: or fails in maintaining his power that his days are numbered— Like Louis Napoleon: he has to overawe opposition and revolution; or he will meet with a fourth deposition: without the opportunity of a flight—or of a retreat, untill another recall—

The Continuance of Santa Annas power; is by Military force: the means to conciliate it—and the will to apply it in overawing— The first An Army is easily recruited: if the second is at command— The reliance on the Church, and Capatalists who Submitted on the recall: has faltered, if not failed, and a Revenue from Rents, and a new Tariff if it should prove sufficient—must come in too slowly for the immediate necessity. Watchful of that occasion for an Emute: as the President knows; in his immediate necessities, he may be more disposed to look to the U States; and her liberality— His pretensions have hitherto been high; on indemnity under the 11 article—and for a recognition of the Bartlett Boundary— His necessities therefore will alone induce him to favor an adjustment of both, by a consideration to be paid on an extension of Territory— These impressions have influenced me in avoiding any immediate discussion on our issues or negotiations for settlement; untill the same were pressed on the part of the Mexican Minister— A communication received; and under consideration, I think opens the path; but must be so managed as to force propositions from their side;—based on their necessities— The Amount required for immediate purposes it is beleved cannot fall short of the Ministers report of deficiencies to be provided for—but it will require a Much larger sum to establish the Government: and protract its existence to a period necessary for its more perfect organization; and consolidation— An Amount which may involve a much larger extension of Territory than was contemplated by the Executive— Sonora and Chihuahua; may be necessary to meet the smaller amount—and all the States bordering on the Rio Grande the latter;—so as to establish a more perfect, and durable boundary;—along a line of Mountains called by some Sierra Madre: but properly a spur from it known as the *Sierra Verde*:—and which expires or depresses on a Sand Ridge on the Cost near Victoria in Tamalipas— Santa Annas necessities as to amount and immediate relief; will be the only considerations on his part to conclude a negotiation on any terms involving sale of Territory— He has blustered much on the subject—and has manifested great sensitiveness, untill of late; whenever mentioned and has even exhibited (which he now intimates was feigned) hostility to the U States— His Minister has on all occasions expressed alarm on the unauthorized invasions of the Territory— Hence the necessity of being discreet in developing any wish to expand, and to bring out a proposition from the opposite side— His immediate necessity will be the only stimulus to him: and preparation to meet on my part the surety of success— Though instructed to refer this matter, for further instructions, I

should be wanting in my obligations to my position; if I did not avail of any occasion, imposing immediate action: to secure our object: assured that whatever amount or conditions my judgement may sanction: for the Two or the Five States: bordering on the Rio Grande, the Gela & the Gulf of California—will be sanctioned by the Executive— But the embarrassment in my path of success: may be on the inability to guarantee the immediate payment of a portion of the purchase money: and which Santa Annas immediate necessities may require— Has not the President a Contingent fund of some ten millions— To what am<sup>t</sup> may I draw against it— I would be pleased to have your views in time; as to the Conditions to be paid for Each of the States named, including South California if it is thought advisable to embrace it in the purchase— I have been somewhat prolix: that you may the better comprehend what I consider the moving springs of successful action in my Mission and how necessary it may be to be prepared to meet & adjust the issues; without reference for larger instructions; relying more on an approval of the responsibility I may assume; than hazard a failure, in awaiting for authority explicit & not general— There is one contingency which however seemingly improbable; may be nearer at hand than any at Washington may have dreamt of— The fact of Santa Annas final resort in his extremities to the US—and the probable approximation to relief; from that quarter: may be the approved occasion of the Moderates; to anticipate him by an Emute, which may again cast them on the surface of the Troubled waters—and make them the controlling influence for a new treaty, or the Confirmation of that Programme: which may be in progress— If they achieve a Triumph; as the Government de facto. the Minister will recognize and being again accredited: transfer the purchase in progress: or open new negotiations— But a higher responsibility under the latter a renewal of negotiations with a new Party may be involved— They may tender as more to be preferred on their part: the surrender of the whole Country: to be annexed hereafter under our Constitutional requirements as States of our Federation— The possibility should not take you by surprize— The Moderate or Federal Party to which is now attached the Legal ability of Mexico and has in accession the Santa Anists; disappointed and discouraged in their repeated efforts to establish a Constitutional Republic of their own; assimilated to that of the US. are awaking to the opinion that no process of accomplishing their designed object, remains but by *ultimate annexation* to the U States;—with the immediate protection as a Territory; until they are tutored and prepared for a final consummation of a Union of all the States of North America under one *Continental Federation*— At this Crisis How Should your Minister act—? His instinct is to receive and protect—

In a private despatch of September 18, 1853, Gadsden thus pictured the political and financial situation as he saw it (D.S., 18 Despatches, Mexico); this despatch, if received on October 26, as endorsed, was not before Marcy when the definitive instructions of October 22 were prepared:

Longer residence, and greater opportunities of extending observation and of acquiring information: have confirmed most of the views communicated in my previous notes— The Government of Mexico has but one Element of existence: & which is successively transferred to others—, The attractive Cohesion of the monied influence— This is essential to maintain the power to divide & plunder— The present is a Government of Usurpation— The Federal & Representative Elements have all been suspended— The Constitution a dead letter: and Legislative, Executive (and in practise judicial power) centred in Santa Anna— He must have power to justify and maintain usurpation— The Army & money to pay it the only means: and the adherents around him know it— Santa Anna continues constant in his policy of Military Organization— The sudden and unexpected death of General Tornel the Sec<sup>r</sup> of War has greatly embarrassed him— Tornel was the right Arm of Military organization, and with money at command: was probably the only one who could have carried it through: and sustain the powers that be— The work of embodiment (though conscription was resorted to) has not equalled expectation; and the projects to raise revenue: the one thing needful: still continue discouraging— The estimate of the Army em-

bodied fall far short of my previous report— More favourable opportunities of judging would reduce the whole Military force in the Republic to from 15 to 20,000— In this City though 7 to 10000 are reported on the 11. of Sept when great exertion was made for display, the rank & file of the 3 arms did not exceed 32 to 3300— The dependence of the powers that be to sustain themselves is on the US—and there is less repugnance to the surrender of Territory than was at first evinced— There has been some sensation showed on the concentration of troops on the frontier— I have no doubt that the increase of our Garrisons & if the rank & file on the whole line of the Rio Bravo will operate advantageously— So on the Ocean— We should have a class of small steamers or Gun Brigs to look into the Mexican Ports on the Gulf as well as the Pacific— We should shew on all occasions the sword, however Covered by the Olive, to these People— As President Polk said (Conquer Peace)— They are peculiar in their notions & influences: and we must be governed accordingly— Could not Ringold's surveying squadron be diverted for a time from its destination the Swanditch Islands & East Indies: to the Gulf of California— A visit to San Blas: Mazatlan & Guymas: with a hasty exploration of the shores of the Gulf to the head, or Mouth of the Colorado, would not be without its influences— There are many irregularities injurious to the American trade practised in this ports by Officials cloaked with brief authority which should be looked into— The British have a sloop of war that visits the Gulf annually and which is low some where in the neighbourhood of Guymas. This gives to the British Merchant decided advantages over the American— The next week will probably be full of developments— To day we have intelligence that Matamoras has pronounced— Yesterday that Alvarez the Governor of Guerro is disaffected— The Governor of Puebla & Gen<sup>l</sup> Robles are still in confinement:

There is certainly some Elements at work which may break out soon and may possibly change the Parties with whom we may have to treat— I shall be vigilant & not compromit any of the interests confided to my charge—

During the opening weeks of his mission Gadsden was also having an extensive correspondence with the Mexican Minister of Foreign Affairs, Manuel Diez de Bonilla, on various subjects, among them Mexican claims under Article 11 of the Treaty of Guadalupe Hidalgo (Bonilla to Gadsden, August 30, 1853; the latter to the former, September 9, 1853; *ibid.*, No. 4, September 18, 1853, enclosures); these exchanges Gadsden rightly considered "the initiatory to a negotiation on the vexed questions which at present disturb the relations between the two countries"; and in the despatch just cited<sup>1</sup> are also these passages of forecast (the despatch and its two cited enclosures are in Manning, *op. cit.*, IX, 603-5, 609-17):

it is most probable that I will receive propositions for a convention to arrange all the disagreements between the two countries, which may involve the cession of additional Territory on the one part: and the payment of an adequate compensation on the other— The amount to be paid will probably be the issue most difficult of adjustment: as it is certain that the necessities of this Government: will raise their pretensions very high— In this you will recognize the importunity with which claims for Indian depredations have on all occasions been pressed, and the extent to which they have been exaggerated in all the statements presented— In this mode of probable adjustment, I have no idea that the 32° of latitude can possibly meet the views of Our Government in seeking an extension of Territory on the Mexican Border at this time— Had you acceded to my proposition of placing the services of Mr Gray<sup>2</sup> at my disposal, I should have been better prepared to act advisedly on the subject when under consideration—

<sup>1</sup> This despatch is marked as received on October 26 and thus after the definitive instructions of October 22 had been written.

<sup>2</sup> Andrew B. Gray, Surveyor for the United States under the Treaty of Guadalupe Hidalgo.



I have endeavored to be informed from various other sources as to the Topography and character of Northern Sonora: and feel convinced that no latitude north of the 31° will answer the purposes of the U States Government— A *natural line* further South embracing better ground for a road, and greater inducements in the climate: soil and mineral resources for settlement, will be found to better subserv the objects of both Governments, in *restraining Indian incursions* and in *promoting the harmony of border neighbourhood*— It is most probable that in the adjustments by convention proposed: the settlements of the claims of our citizens on Mexico and the relinquishments of claims on the Tehuantepec grants may be involved— The articles in the Public Journals referred to make mention of such an arrangement as desirable— You promised further instructions in these matters and in the absence of them I may feel embarrassed unless I act on my own responsibility on propositions which may be favorable to the interests of all parties

Two conferences between Gadsden and Santa Anna followed, respectively on September 25 and October 2; they are thus reported<sup>1</sup> (D.S., 18 Despatches, Mexico, No. 6, October 3, 1853):

It [Gadsden's note to Bonilla of September 9, cited above] led however to an intimation from the President of Mexico that a personal interview with me would be gratifying to him— That interview which took place on the 25<sup>th</sup> ult. resulted—First—in an understanding,<sup>2</sup> that the disputed Territory should remain in *Statu quo*— The troops of neither Power to occupy it during our negotiations, and information: and orders were to be transmitted accordingly to the commanding officers on the Frontiers— Second—that the Government of Mexico were willing to negotiate for a new boundary involving extension of territory So as to reconcile the conflicting interpretations of the articles 5-6 and 11 of the Treaty of Guadalupe Hidalgo— As neither party were prepared to present or entertain propositions on that basis of adjustment: the subject was deferred to another interview— This was held on the 2<sup>d</sup> instant at which I presented a memoranda, herewith enclosed, embracing a wider range for the harmonizing the relations between the two neighbouring Republics: than that limited in the enquiry submitted at the first interview— On reading the views which had induced me to present to the consideration of the President of Mexico: the policy which strongly recommended our looking to the future as well as to present, in negotiations which were intended to perpetuate and strengthen the friendly relations between two neighbouring powers: he at first appeared disposed to study and reflect on them— In the course of conversation however: he observed that he was so persuaded that the nation would be so strongly opposed to any other dismemberment of her territory than that which might be embraced in the first proposition: and for the purposes therein stated, that he could not for a moment entertain or

<sup>1</sup> This important despatch of Gadsden of October 3 and also his No. 7, of the same date, are marked as received on October 24; doubtless at the same time came his private despatch of October 3; so probably none of them was in the hands of Marcy until after the definitive instructions of October 22.

<sup>2</sup> In a note to Gadsden of October 27, 1853, the Mexican Minister of Foreign Affairs formally declared "that there has not been, nor could there have been, any accord or agreement on the part of Mexico whereby she consented to place the part of her territory indicated by Your Excellency, known by the name of La Mesilla, in the dubious position implied by an *agreement with reference to the statu quo of that matter*", but alluded to the "well-known fact" that Mexico had removed "the forces which were proceeding to La Mesilla without even reinforcing the frontier points on this side of the Bravo". In his answer (October 30) Gadsden wrote that "the United States must feel relieved from any recognition of a similar obligation, and at liberty to be governed as necessity or policy may impose, . . . though with no design . . . to take Military or forcible protection of the Domain which belongs to her, so long as the spirit of the Article 21 [of the Treaty of Guadalupe Hidalgo] can be invoked" (D.S., 18 Despatches, Mexico, No. 12, November 3, 1853, enclosures; the two notes are in Manning, *op. cit.*, IX, 647-49). The *status quo* was in fact maintained.

discuss the strong political considerations, which had been presented on my part and which so recommended the anticipation of what in the future might possibly be to the advantage of both powers— That for the present he did not feel that he could be justified or sustained in any other negotiations than those which contemplated the settlement of existing disagreements— The conference therefore terminated: with the understanding that he would be pleased to hear further from me on the first proposition which was submitted and acquiesced in at the previous conference on the 25<sup>th</sup> Sept:— With the expectation that the mail by the Texas due here on the 8<sup>th</sup> instant may bring me instructions or suggestions from Washington, which may have a favorable influence on any arrangements which it is the desire of the Government of the U States to effect with Mexico: I shall defer any propositions which may be expected from me to that period— The conference of the 25<sup>th</sup> of September closed with an order for the release of the Schooner Allen and Crew detained at Acapulco, and for the discharge of the Californian Mager, confined under legal arrest at El Passo— In the correspondence marked I. the Minister seems very solicitous to impress on me the motive which induced the President of Mexico to stay all further proceedings against the arraigned: and in the accord which was made on my part: I presume I have correctly anticipated the approval of the President of the U States— The conduct of the Captain of the Allen: in the second issue: had certainly committed himself and crew (and condemnation under the evidence before court seemed inevitable) to a penalty far greater than the imprisonment he has already endured under arrest— Mager was likewise arraigned for a trespass: committed within the territory of Mexico: and which had it gone to trial would most probably have involved a heavier penalty than the period of his imprisonment and which would have been protracted during the progress of trial— I deemed it therefore advisable to accept a release of the parties under accusation and trial: and to accord to the Mexican President the *credit of a courteous concession*: which may have its influence in the approaching negotiations— I think it probable that I will send if I can engage a Reliable individual to El Passo: not only with a view of communicating to the Commanding Officer the intelligence herein conveyed: but to send a permit, which the President of Mexico has accorded to examine the Country over which we desire property and Jurisdiction—if a reconnoitering party in that quarter can be organized for the purpose— It is most probable my express may reach in time to meet Senator Rusk<sup>1</sup> and his party: and although the examinations proposed may not be made in time to aid me in my negotiation: the information collected may prove valuable to the Department of War: in the investigations imposed by an act of Congress in relation to a Rail Road to the Pacific—

The paper headed "Memoranda" which Gadsden presented to Santa Anna at the conference of October 2 is of much interest; it shows that in two major respects Gadsden had not kept within the confines of his instructions; "to reconcile all existing disagreements" by treaty meant the writing of clauses on the Tehuantepec grants or on one of them at least; and the cession of territory suggested by Gadsden in the "Memoranda" is enormously beyond that proposed by Marcy under date of July 15; in this regard the views of Gadsden are in accord with the instructions which he was to receive in November; and it may well be that in letters from Washington (perhaps of Jefferson Davis) Gadsden had been informed of the different attitude that was to be taken. The "Memoranda" is of this tenor (*ibid.*, enclosure):

Memoranda—

It is understood that the two Governments have consented to reconcile all existing disagreements on the basis of a new treaty: which may involve the acquisition of additional Territory: for the purposes of Securing a line more ad-

<sup>1</sup> Regarding the tour of Senator Thomas J. Rusk, of Texas, see Garber, 24.

vantageous to both Republics: in its greater capacity for defence, and in securing the right of way, and a transit for American Citizens to the Pacific—

On this basis I shall be prepared to entertain or to make a proposition for satisfactory settlement and adjustment—

—Second—

There are strong considerations however which might make it advantageous to both Parties—The one to surrender a larger Territorial domain than that mentioned above, and the other to accept by the payment of an adequate and just compensation for the same— These considerations are to be induced or influenced by the disposition of the people of both Republics, residing on the frontier: and in the neighboring Border States: who equally impatient are constantly committing the friendly relations of the two neighboring Republics: by precipitating measures which at a more distant period must be accomplished— unless successfully opposed by non intercourse—by neighborhood hostility: by military array and preparations: and by the disposition of armed forces on either side, involving a continued frontier war—each Power armed against the other at great and burthensome expense— The Government of the U States are not desirous or ambitious of any further extension of domain on the Mexican border: than that noticed in the first proposition: and which is solely with the view of reconciling the vexed questions and adverse interpretations of the 5, 6 and 11 articles of the Treaty of Guadalupe— If the Mexican and U.S. Government see that it might be advantageous to both to arrest in advance the increasing spirit and threatening tendencies of the border difficulties into which the citizens of each are daily involving the two *countries*: and from causes which can only be removed: by so extending the boundary of one Power as will make it from its strong natural mountain outline, a *permanent* and *respected barrier* between both countries— Then propositions if acceptable: will be made on the basis of a *mountain and desert boundary*: for the purchase of two or more border States: on a fair consideration to be paid— It is an old national maxim which all history has confirmed, that rivers and valleys unite a people—mountains and unpassable barriers separate— No power can prevent in time the whole valley of the Rio Grande from being under the same Government All the sympathies of the Mexican States west of that river must and will be with the State or states east— And either Western Texas must come back to the Mexican Government, or the States of Tamaulipas: New Leon: Coahula and Chihuahua; will by successive Revolutions or purchases become united with Texas— These are solemn political truths—which no one can be blind to— It is for the consideration therefore of the two Powers claiming opposing jurisdiction to determine (where fate seems to have decreed) whether it is not in the harmony of good neighborhood to the advantage of both Republics to sell and to purchase: and thus anticipate a union of States naturally bound to each other: than to have it forced hereafter on negotiations which will become necessary for the readjustment of disagreements, which like those that now exist are now inviting settlement on the same harmonious basis—

The treaty of Guadalupe inculcates an instructive lesson— It is a wise policy that where events are inevitable they should rather be met by harmonious cooperation and concurrence than precipitated by violent and ineffectual opposition—

In another despatch dated October 3, 1853, Gadsden wrote that he hoped to return to the United States toward the close of the year for a brief visit, adding (*ibid.*, No. 7):

Besides this I believe that in a personal conference with you I can present much worthy of consideration and through which (if you concur) a commercial treaty; satisfactory to both countries may in the course of the year be arranged— This will do more to harmonize good neighborhood: than all the treaties which can be made involving extension of territory: and right of way for Rail-roads—

In still another despatch of October 3 (*ibid.*, private) are these passages recounting his difficulties as Gadsden saw them and giving his thoughts on the Garay and Sloo Grants and their possible accommodation (the communication is illustrative of Gadsden's weird punctuation, capitalization, spelling, and English):

There are many obstacles, and however seemingly trifling; which may involve delay, though they now threaten defeat— If I am to credit what almost every one insinuates: other appeals more substantial than Courtesay; Titles, and adequate national compensation for Territory acquired, will have to be made— I have intimated it to you in another letter—but the Universality of the opinion: the importunity with which it has been obtruded, and urged on my Consideration; from many and suspected interested quarters; *As a Necessity*—and the oft repeated suggestions of the *Quo modo*: by which the oil may be applied to the Axle; (to which I have lent an unwilling ear)—has rather awakened doubts in my mind; that there are others around equally as ambitious of the Spoils: as these may be, who are accused, and arraigned as to be influenced by no other appeal— As correct as may be the charge: and as melancholly, for the Credit of human nature; may be the practise: to which on Every Change of Government, Each high functionary has yielded: I am not inclined to volunteer the *reintroduction of the softning appeal*—before forced on me in the progress of the negotiation— It may be well therefore that I be prepared: if the President yields to the necessity of respecting this Antient Franchise: and his knowledge, with that of Att-Gen Cushion, Sec<sup>r</sup> Davis<sup>1</sup> and others, as to *usages* and *influences* here are often cited to me— I must confess however that my misgivings are so great— So confirmed in the Midst of smaller birds of Prey for the Carron: which it is said the appetite of a Nobler Hawk covets: that I should be cautious of acting on a *presumption* how I commit myself, and the Administration in recognizing the *necessity*; or in the attempt to administer what is so repugnant to the higher sense of the public integrity and fidelity of the Executive officers of our Government— But on this subject I look for your views by next steamer—

I feel somewhat embarrassed for the delayed instructions on private claims— This may interpose an obstacle to an early & favourable negotiation— They are multiplying daly, and, the incessant efforts to a committal of the Minister in their advocacy; are with the impression that such interposition will be considered a recognition of their justice, under any provision for payment of claims, which seem to be gaining credence far and near— I endeavor in all cases of doubt to defer a Ministerial interference until I can receive further Instructions— The Mexican Government needs money— Their necessities are great, and their pretensions very extravagant: The most serious difficulty in the way of extension of Territory will be *The Consideration* to be paid— The Articles in our News Papers as to objects in desiring an extension of Territory; have encouraged the idea & which have even been propigated by American Citizens: that our Government will pay any price demanded for the Right of Way for a Rail Road— I had read yesterday an extract from a letter from a Mexican Commissioner in London; stating that Minister Soulé, had "divulged" to him, my instructions: and among these, reference was particularly made as to the great desire of the Government to procure the right of way—and would merge the Teheuantipee Transit in the subject—&c &c— All used for effect—! If I was at liberty to insist on the recognition of the Hargous grant: and bluff it against extension of Territory in Sonora; for same purpose; it might possibly have some effect— What think you of an intimation, to confirm the Convention to the Sloo grant; if an indemnity was paid to the Grantees of the Garray grant from the Territory to be acquired south of the Gila; making the Sloo grantees responsible, as they ought to be, for a portion— If You are favourably disposed towards these suggestions You had better confer with Hargous, and Agents of Sloo, and ascertain what would satisfy the first, and what portion of the Amount agreed on; the latter would be responsible for— All the expenses of examination and Survey would certainly be of value to Sloo and these he

<sup>1</sup> Attorney General Caleb Cushing and Secretary of War Jefferson Davis in the Cabinet of President Pierce.

should pay for independent of something due to Garay for having availed of that information to supercede the older Grant to him—

It is probable that if the "*apliances*" to which I have adverted become absolutely necessary to accomplish the object of extension South of the Gila; that it could be arranged through these parties: (with which it is said they are familiar) and thus cover the US Government agency in the affair— The amount of indemnity awarded Hargous: (for it may possibly to a large proportion be spoil) may be divided among those who have such a relish for it: and which the Government will have to pay to gain their ends— I will have, without being committed, the Representatives of the Two interests in Mexico consulted—

Every thing connected with the Government in Mexio is much unsettled: Discontent; disappointment, and faction are still at work— The arrests; rustications; and banishments: only give publicity to Santa Annas fears— He is on a volcano, which may explode in a month; and yet be smothered for a more protracted period— Money and an Army, that can be continued faithful; are the elements on which he must rely for a continuance of his power— The first he has to devise the ways & means for: in order to the secure the Second— All his policy at present is to make this a Military Power; when like Louis Napoleon, he may be pronounced as Emperor— This necessity may dispose him favourably to a Treaty with the US., provided the Compensation to be paid, is equal to his Cormorant appetite: and digestion— On the other hand he has been so denunciatory against those who he accuses of having dismembered the Nation, he has apprehensions that a Treaty, involving extension of Territory on our part: will be the signal for a successful revolution against him— You see in the Memoranda of a Conference sent you something of this apprehension manifested— Every thing therefore is in Embryo, and No one can anticipate the birth— A week may reconcile all our differences—but they must be paid for— And Yet difficulties may interpose throwing us back to the beginnings— A Commercial Treaty can only be made to follow the adjustment of what is before us— It cannot precede

Permission "for a small commission sent by the officer commanding the North American boundary line opposite Sonora to reconnoiter this region to the west of the Rio Grande and to the south of the Gila" was formally granted by Santa Anna on October 11; Gadsden forwarded the permit to Brigadier General John Garland, U.S.A., who was in command of the American forces stationed at the frontier, "that he might avail of it in conformity to any instructions he may have from the Department of War" (*ibid.*, No. 10, October 17, 1853, and enclosures; see Manning, *op. cit.*, IX, 621-24). In the cited despatch Gadsden wrote thus of the position of the negotiation:

The correspondence, interviews, and conciliatory adjustment of late of many private issues with the Minister of Foreign Relations: would have encouraged a proposition from me, before this, for the settlement of the Boundary question on the basis accorded to on the part of the President of Mexico had I been prepared to make one to my own Satisfaction— In the absence however of the promised instructions on Private claims: and those which particularly relate to the issues on the Tehuantepec Grants: it was impossible to submit propositions which would have been acceded to, unless they embraced an adjustment of every issue between the Two Governments— The President of Mexico has expressed his desire on this subject: and as I know that it is in harmony with the policy of the President of the United States, I have conveyed my assent to an adjustment of all the disagreements between the Two Governments in one Treaty— The delay however, which has occurred in the negotiations, will not operate to the disadvantage of the U States: For the Mexicans are very slow in all their business transactions: and any anxiety or precipitancy manifested by the opposite party,

is sure to raise their pretensions or claims: and particularly where pecuniary compensation is involved—

Further elaborate arguments on the obligations of Article 11 of the Treaty of Guadalupe Hidalgo were penned at Mexico City; the note of Bonilla of October 18 contains over eight thousand words, and the response of Gadsden of November 14 is nearly as lengthy (D.S., 18 Despatches, Mexico, No. 14, November 19, 1853, enclosures). There was also a long note on the same subject from the Mexican Minister at Washington, dated October 22, 1853 (D.S., 7 Notes from the Mexican Legation); this was briefly answered two months later by Marcy, who pointed out that negotiations were in progress at Mexico City (D.S., 6 Notes to the Mexican Legation, 362, December 22, 1853; for the four papers cited in this paragraph, see Manning, *op. cit.*, IX, 625-47, 650-63, 152-53).

The first instruction regarding negotiations for a treaty written to Gadsden after his departure on his mission was this, in cipher, of October 22, 1853 (D.S., 16 Instructions, Mexico, 435):

This accredits to you Christopher L. Ward, Esq<sup>r</sup>, who is sent by the President as a Special Messenger, fully possessed with his views in regard to the negotiation of a new line with Mexico. His verbal communications on that subject you will regard as instructions from this Department.

Ward was agent of the Hargous interests, claimers under the Garay Grant (see Garber, 94). This explanation of the sending of verbal instructions was written by Marcy on January 6, 1854; but no reason for the choice of Ward as their bearer was officially given (D.S., 16 Instructions, Mexico, 442-45; in full in Manning, *op. cit.*, IX, 156-57):

It is hardly necessary to explain the circumstances which induced the President to send Mr. Ward as a Special Messenger to Mexico with verbal instead of written instructions for you. It was thought that there was at the time he was sent out a very critical state of things in regard to the ruling power in that country, and that immediate pecuniary means would be indispensable for its maintenance; and to provide these means in the apprehended emergency a liberal cession of territory might be readily made. But at the same time it was suggested that should it in any way become publicly known that such a cession was contemplated that fact would not only defeat the object but overturn the existing government. It was, therefore, deemed prudent not to intrust written despatches even in the hands of a Special Messenger. It was also apprehended at that time that the very unlimited power of General Santa Anna might soon be circumscribed and he would not at a future period be able to do what his necessities would then incline him to do in order to get the means to strengthen his doubtful rule.

These, and other considerations, led to the adoption of the mode of communicating with you verbally through a Special Messenger.

In considering the instructions of October 22, 1853, conveyed by Ward, it is important to note that Marcy had then received very little from Gadsden; assuming that the available records are complete and are accurate as to dates, it appears that Marcy knew nothing of Gadsden's interviews with Santa Anna on September 25 and October 2, for Gadsden's despatches of October 3 were not received until October 24; even his despatches of September 18 were not at hand

until October 26 (cf. Garber, 90); so Marcy on October 22 was not aware that Gadsden, on his own initiative (or at least without instructions from the Department of State), was already committed to a global negotiation.

The instructions which Ward was charged to deliver are recorded in D.S., 3 Special Missions, 38-43, 277-81; and a draft and a signed original thereof, including the annexes, are in the same volume, bound between pages 46 and 47. The original which was given to Ward, and which Ward returned to Marcy before he left the United States, is with Ward's covering letter, dated at New Orleans October 31, 1853, in D.S., 19 Special Agents (the annexes thereto are bound in that volume following a copy of the communication of Ward to Gadsden of November 14, 1853). The text of those instructions and annexes, from the original last mentioned, follows:

Memorandum of instructions which Christopher L Ward, Esq<sup>re</sup>, Special Messenger to Mexico is directed to communicate verbally to James Gadsden Esquire Minister of the United States.

In the first place Mr Ward will present to him the Letter of introduction from the Secretary of State in Cypher and explain the circumstances which rendered it proper in the opinion of the President, to communicate his views in relation to a Treaty for a new boundary by a Special Messenger rather than in the usual mode,—by a written despatch. Should a despatch upon that subject be intercepted and its contents become known to others than to President Santa Anna and his most trustworthy friends, all hopes of making a favorable arrangement in regard to a new boundary, would be at an end.

Mr Ward will submit to Mr Gadsden the several lines which have been considered by the President. The sum to be paid for either of these lines, is to be a full consideration for the additional territory acquired by the United States in the change of the boundary, and for all damages and injuries which can be, in any way, claimed by Mexico, on her own account or on account of any of her Citizens under the Treaty of Guadalupe Hidalgo dated 2<sup>d</sup> February, 1848.

There may, also, be a reciprocal article in the new Treaty releasing Mexico from all damages and injuries which the United States may claim for themselves or on account of any of their Citizens arising under any articles of the Treaty of Guadalupe Hidalgo.<sup>1</sup>

For line N<sup>o</sup> 1 (with a general description of which Mr Ward has been furnished and will submit to Mr Gadsden) he is authorised to offer any sum up to fifty millions of dollars to be paid in annual instalments of ten millions of dollars—This line Mr Ward will be able to trace on a Map, and probably he can show Mr Gadsden the Map on which the line was traced here by the President.<sup>2</sup> This line is much preferred to any other, and is the best for both parties because it would be a permanent boundary, guarded and defended at much less expense than any other, and remove all serious apprehension of border difficulty. It would be desirable even with this boundary to get a stipulation releasing the United States from the obligations imposed on them by the XI<sup>th</sup> Article of the Treaty of the 2<sup>d</sup> of February, 1848. It is still more important if any of the lines hereafter mentioned should be obtained that there should be such a release.

For the line N<sup>o</sup> 2, which does not include the Peninsular of Lower California, Mr Gadsden is authorised to offer the sum of Thirty five millions of dollars (if it cannot be obtained for less) to be paid in the same manner as is proposed for the payment of the consideration for Line N<sup>o</sup> 1.

<sup>1</sup> This would have excluded and left open all claims *not* arising under that treaty.

<sup>2</sup> Probably Ward had with him this map or one similarly marked; the penciled notations to the descriptions of the four lines in the annex to this memorandum of instructions (see *infra*) indicate that those four numbered lines were drawn on some map in different colors; but no such map has been found.

For the Line N<sup>o</sup> 3, he is authorised to offer Thirty millions of dollars (if it cannot be obtained for less) to be paid in like manner. This line includes the Peninsular of Lower California.

For the Line N<sup>o</sup> 4 the sum of Twenty millions of dollars (if it cannot be obtained for less) may be offered to be paid in one and two years, half in each.

If it should be found impracticable to get either of the before mentioned Lines, then the object of the negotiation will be to get an eligible route for a Rail road from the Rio Grande to California. Frontera<sup>1</sup> on the Rio Grande is accurately ascertained to be in Latitude  $31^{\circ}48'$  and some seconds. A Line from that point of Latitude due West to the Gulf of California would throw within the limits of the United States a very good—perhaps the best—route for such a rail road. Though there has been but a partial reconnaissance there is but little doubt here entertained that a Line on the  $32^{\text{d}}$  parallel of latitude would give the United States a good route for a Rail Road from the Rio Grande to the Gulf, but neither a Line from Frontera or on the  $32^{\text{d}}$  parallel would be a good boundary, and if no better one can be obtained, it is important that with it there should be a release of the United States from the stipulations of the Eleventh Article of the existing Treaty of boundaries. For a release of all claims for damages and losses under that Treaty, and a release from the Eleventh Article, together with a Line from Frontera or on the  $32^{\text{d}}$  parallel of Latitude the United States Minister is authorised to pay up to fifteen millions of dollars—

The sum mentioned for each line is the maximum which the United States Minister is authorised to offer. He will get any one of the Lines indicated for a less sum if it be practicable. He is vested with discretionary power to modify to some extent any one of these lines, keeping in view and obtaining the end which he is aware, the United States have for negotiating a new line. One of the modifications contemplated is the deflection of the line from the  $111^{\text{th}}$  Meridian of Longitude so as to pass by the shortest line to the Mouth of the Gila. This would equally with the proposed line secure the object of an uninhabited boundary but would give an awkward contour and deprive us of a port on the Gulf of California. Any considerable change will involve the propriety of a change in the amount of the consideration to be given. This is confided to his discretion influenced as it will be by the offers before specified.

It is believed that the condition of things in Mexico will not admit of a protracted negotiation and it has not been deemed expedient to complicate it with any other matters than a change of boundary, and the reciprocal claims which have arisen under the present Treaty of Peace and limits.

Should there be a prospect of making a Treaty within a short period Mr Ward will remain for the purpose of bringing it to the United States.

W. L. MARCY

STATE DEPT. Wash: Oct 22, 1853.

N<sup>o</sup> 1

Marked in Lake on the Map<sup>2</sup>

From a point on the Gulf of Mexico midway between the Boquillas Cenadas [Cerradas] and the Barra de Santander Westward along the ridge dividing the waters which flow into the river San Fernando from those which flow into the River Santander to the Coast range of Mountains. Thence obliquely across that range on the South side of the Pass of Linares and along the heights which

<sup>1</sup> The Honorable Lawrence M. Lawson, American Boundary Commissioner, International Boundary Commission, United States and Mexico, has been good enough to communicate this information concerning Frontera and its location (letter of March 29, 1938). Frontera, or White's Rancho, was a triangulation station of the Salazar-Diaz survey of 1852 and an astronomical station of Major Emory in the same year; it was reestablished during the resurvey of the Texas-New Mexico boundary made by Samuel S. Gannett, by whose report, dated July 17, 1930, the latitude is  $31^{\circ}48'43''.494$  and the longitude  $106^{\circ}33'25''.081$ ; the point is located almost two miles northwest from Cristo Rey Peak and lies on the northerly side of the Rio Grande, about two and one-half miles upstream from Monument No. 1 of the Western Land Boundary; the site is now a suburban district of irrigated farms.

<sup>2</sup> Here and elsewhere in the annexes to the instructions of October 22, 1853, penciled annotations on the source paper are printed in six-point type.



border the desert plains of Durango to a point South of the Lakes de Alamo and Parras. Thence along the highlands on the West side of the said Lakes following the principal ridge which divides the waters flowing into the Rio Conchos and Rio Sabinos up to the mountain ridge contiguous to the Rio Grande. Thence along said ridge and across the Conchos river up to the parallel of San Eliasario and thence Westwardly passing on the South side of Lake Guzman along the highlands or the middle of the plains which divide the waters flowing into the Gulf of California, from those flowing into the Rios Grande and Gila until the line so traced shall intersect the 111<sup>th</sup> degree of longitude West of Greenwich—and thence in a direct course to the Gulf of California at the 31<sup>st</sup> degree of North latitude. Thence down the middle of said Gulf to its Southern extremity and around the Southernmost point of the Cape of Lower California and along its Western Coast including all adjacent islands to the termination of the U.S. Boundary on the Pacific.

This will include an area of, say 125.000 Square miles.

Ultimatum \$50,000,000 in an. inst: of \$10,000,000

Nº 2.

Marked in red pencil

From a point on the Gulf of Mexico midway between the Rio Grande, and the Rio San Fernando, Westwardly through the middle of the plain which divides the waters flowing into the Rio Grande and the Rio San Fernando, until the line so drawn shall reach the highlands, and thence along said highlands, so as to include the waters flowing into the Rio Grande to the Pass of Los Muertos, thence Northwardly along the highlands, including the waters of the Rio Grande, to a point on said River, between the mouth of the Rio Pecos and the Presidio del Norte, where the highlands thus defined are intersected by the Rio Grande. Thence along said river to the 31<sup>st</sup> degree of North latitude—thence from the cañon of the Rio Grande below San Eliasario, north latitude thirty one along the mountain ridge which is contiguous to the Rio Grande, up to the parallel of the Presidio San Eliasario. Thence Westwardly passing on the South side of Lake Guzman along the highlands or the middle of the plains which divide the waters flowing into the Gulf of California from those flowing into the Rios Grande and Gila until the line so traced shall intersect the 111<sup>th</sup> of longitude west of Greenwich. Thence in a direct course to the Gulf of California at the 31<sup>st</sup> degree of North latitude. Thence west to the middle of the Gulf of California. Thence up the centre of the said Gulf and the Channel of the Rio Colorado to the present Boundary of the United States.

This will include an area of, say 50.000 Square miles.

\$35,000,000 in instalments

Nº 3.

Marked in black to the gulf & then in lake

From the Cañon of the Rio Grande below San Eliasario North latitude thirty one along the mountain ridge which is contiguous to the Rio Grande up to the parallel of the Presidio San Eliasario. Thence westwardly passing on the South side of Lake Guzman along the highlands or the middle of the plains which divide the waters flowing into the Gulf of California from those flowing into the Rios Grande and Gila, until the line so traced shall intersect the 111<sup>th</sup> degree of longitude West of Greenwich. Thence in a direct course to the Gulf of California at the 31<sup>st</sup> degree of North latitude. Thence down the middle of said Gulf and around the Southernmost cape of Lower California and along its Western coast including all adjacent islands up to the present boundary of the United States.

This will include an area of, say 68.000 Square miles.

\$30,000,000. in instalments.

Proposed Boundary.<sup>1</sup>

marked by black line

From the Cañon of the Rio Grande below San Eliasario, north latitude at or near the 31 Thirty first degree, along the mountain ridge which is contiguous

<sup>1</sup> This is No. 4.

to the Rio Grande up to the parallel of the Presidio San Eliasario. Thence Westwardly passing on the South side of Lake Guzman along the highlands or the middle of the plains which divide the waters flowing into the Gulf of California from those flowing into the Rios Grande and Gila until the line so traced shall intersect the 111<sup>th</sup> degree of longitude West of Greenwich. Thence in a direct course to the Gulf of California at the 31<sup>st</sup> degree of North latitude. Thence West to the middle of the Gulf of California. Thence up the centre of the said Gulf and the channel of the Rio Colorado to the present boundary of the United States.

This will include an area of, say 18,000 Square miles.

\$20,000,000 in two instalments.

Pencil annotations on the manuscript indicate that the four numbered lines were marked on an accompanying map in three colors: lake for No. 1; red pencil for No. 2; black for No. 4; part of the black of No. 4 and part of the lake of No. 1 showed No. 3. The four numbered lines of President Pierce and the line of 31°48' are charted in Paullin, *op. cit.*, plate 94B; see also the text in *ibid.*, 66 (but observe that in that text, column 2, line 9, 31°48' is misprinted 30°48').

In view of the magnitude of the issues at stake, it is noteworthy that no draft clauses were sent to Gadsden; apart from boundary descriptions, questions of form and wording were left wholly to him; no full power was furnished; he was referred to no precedents; and no mention was made of Article 33 of the treaty of April 5, 1831 (Document 70), the annulment of which along with the annulment of Article 11 of the Treaty of Guadalupe Hidalgo had been proposed by Webster more than two years earlier, when a draft convention had been prepared (see Manning, *op. cit.*, IX, 89-92, August 19, 1851).

Ward arrived at Veracruz on November 5, left there by the diligence on the afternoon of Monday, November 7, and was in Mexico City on November 11, 1853; he wrote that he had "carefully communicated" to Gadsden "the instructions given me" and had "placed in his hands" the "Map containing a delineation of the various proposed lines of boundary" (Ward to Marcy, November 18, 1853, in 44 Marcy Papers, 42729).

Along with the recorded instructions to Ward should be read this communication to Gadsden of November 14, 1853, in which Ward gave a very fair paraphrase of the memorandum signed by Marcy; but to this Ward added four paragraphs of his own on behalf of the Garay Grant, in which he included his version of statements made to him by President Pierce in "consultation" (D.S., 19 Special Agents):

HON. JAMES GADSDEN,  
*Envoy Extraordinary & Minister &c. of the United States at the Mexican Republic.*

SIR, I proceed to give you in writing, agreeably to your request, my best recollection of the Memorandum handed me by the Hon. W<sup>m</sup> L. Marcy Secretary of State, which, in compliance with his suggestion to that effect, I returned to him through the Mail, previous to my leaving the shores of the United States.

In the first place, I was directed to present to Gen. Gadsden, the letter of introduction in cypher, and to explain the circumstances, which rendered it proper in the opinion of the President, to communicate his views, by a special messenger, rather than in the usual mode, by a written dispatch. Should such a dispatch be intercepted and its contents become known to others, than the President Santa Anna and his most trust-worthy friends, (and even if to him or them,) great

embarrassments might result, in disposing of the different questions at issue between the two countries.

I was directed to submit to Gen. Gadsden the several lines which have been considered by the President, in regard to a new boundary. The sum mentioned to be paid for either of these lines, is to be taken by the Mexican Republic in full consideration for the additional territory which may thus be acquired by the United States; and also for all damages claimed by Mexico on her own account, or on account of any of her citizens, as arising under any of the articles of the Treaty of Guadalupe Hidalgo—of 2<sup>nd</sup> of February 1848. There may also be a reciprocal article, releasing the Mexican Republic from all damages and injuries which the United States may claim for themselves, or on account of their citizens, arising under any of the Articles of the same treaty.

For the line *No. 1*, which I have submitted to Gen. Gadsden, he was authorized to pay as high as \$50,000,000, if he could not secure it for a less sum. The amount to be paid in instalments of \$10,000,000. per annum. This line is much preferred by the President to any other; and it is deemed best for both parties, because it would form a *permanent* boundary, and be guarded and defended at much less expense than any other, and do away with the existing facilities and tendencies to border difficulties.

For the line *No. 2*, of the accompanying memorandum, he was authorized to offer as high as \$35,000,000 payable as before. This line does not include the isthmus [*peninsula*] of Lower California.

For line *No. 3*, which does include that peninsula, he was authorized to allow \$30,000,000, if it cannot be obtained for less;—payable in three yearly payments.

For line “*No. 4*”, called “*proposed boundary*”—as high as \$20,000,000—payable in two yearly payments.

If it should be found impracticable to obtain either of the before mentioned lines then the first object should be to secure an eligible route for a rail-road to the Pacific; or rather from the Rio Grande to California. Frontera, on the Rio Grande has been accurately ascertained to be in latitude 31°48' & some seconds. A line from Fronteras due West, it is supposed would throw within the limits of the United States, probably the best route for such a road. The reconnoissance has been but a partial one; but little doubt is entertained that a boundary line on the 32<sup>nd</sup> parallel of Latitude, would afford a good route for a rail-way from the Rio Grande to the Gulf. Neither the line from Frontera, however, nor one on the 32<sup>nd</sup> parallel of latitude would afford a good boundary. But if no other can be obtained, Gen. Gadsden is authorized to offer for either of them, as high as \$15,000,000.

The sums mentioned are the maximum points respectively; and in each case it was intended that a release from all claims under the Guadalupe treaty, as well as the entire abrogation of the Eleventh article of that Treaty, should be secured. Gen. Gadsden was left at liberty to modify to some extent, should he find it necessary, any one of these lines—keeping in view the ends which his Government has, in securing a new line. One of these modifications was mentioned; which was, a deflection of the new line as proposed, from the point of the 111<sup>th</sup> Meridian of Longitude, so as to pass by a near line to the Rio Gila. This might procure an uninhabitable boundary but it would give an awkward contour, and deprive us of all chance for a Port on the Gulf of California. Any considerable change in line, would involve of course, a corresponding change in the amount to be given.

It was believed that the present doubtful and distracted state affairs in Mexico, would not permit a protracted negotiation; and it was not therefore deemed expedient, to press upon the attention of Gen. Gadsden, any other of the open questions between the two countries—or embrace any other in this special dispatch, except those of boundary and the reciprocal claims which have arisen under the present treaty of peace and limits.

The foregoing is the spirit at least, and as nearly as can be recollected, the words of the Memoranda of instructions confided to the undersigned to be communicated verbally to Gen. Gadsden. I am constrained however, by what I learned are the views of the present Government of Mexico, to add, that I am *fully satisfied* it was not the intention of the President of the United States, in neglecting at this time, specific instructions upon the other open questions of difficulty

with Mexico, to preclude Gen. Gadsden from the exercise of a reasonable discretion, in making a treaty adjusting *all* these questions now pending between the two countries. In truth, it appeared to the undersigned, that this neglect arose more from a want of time on the part of the President in dispatching a messenger in season for the sailing of the packet from New Orleans on the first of the present month, than any want of decision upon the points neglected. During the consultation in regard to these subjects, the President repeatedly stated in the most decided terms, that he had recently examined the claims of American citizens, under the Grant made by Mexico to Don Jose de Garay, and fully concurred in the conclusions of the U.S. Senate Committee of Foreign Relations upon that subject; that he was determined to support those claims in every proper form short of a declaration of war in regard to them alone, or for their specific enforcement; and that he would not recede from the position taken by the former administration in reference to the subsistence and validity of the Grant in question. He also declared his full determination to repudiate the late Treaty made by the immediate predecessor of Gen. Gadsden, *without transmitting it to the Senate*, as being alike contrary to the instructions given by the Department of State at Washington, and injurious to the interests of the people of the United States.

If, therefore, as the undersigned is induced to believe from information gathered since his arrival in Mexico, some satisfactory adjustment of this long-pending question can be reached, which will probably be acceptable to all parties concerned—it would manifestly be consonant with the views and the wishes of the President of the United States, that such an adjustment should enter into the terms of the new treaty. A settlement of this question removes the only doubt which I understood the President to entertain, as to the propriety of providing also *at this time* by treaty arrangement, for the settlement of individual American claims for damages for Mexican spoliations; as it would take from the list of those claims, the only one likely to embarrass a Commission in a proper adjudication.

It can scarcely escape the ripe reflection and experience of Gen. Gadsden, that if possible to do otherwise, to present to the American public, a treaty simply securing new territory, or a new route for a rail-way which has its rivals and will have its opponents in various forms;—in other words, a treaty looking solely to the speculative interests of our country, and paying large sums to promote them, while long-pending and real injuries of individuals, are left unnoticed and unredressed—he would not be likely to obtain either for himself or the administration at home, that unqualified approval on the part of their constituents, which every public man has a right to be ambitious of, and which Gen. Gadsden has heretofore been so successful in securing, whenever he has held a public position.

So that, in every point of view, the undersigned is clearly of opinion, if the opportunity exists, or shall be presented, Gen. Gadsden will be *fully justified* in arranging in one treaty, and at once, *all* the open points of difference between the United States and the Mexican Republic, if the settlement of the question of boundary shall not thus be greatly delayed.

I have the honor to remain, with great respect, your friend & obedient servant—

C. L. WARD.

CASA DE ITURBIDE, CITY OF MEXICO, Nov. 14<sup>th</sup> 1853.

In his message to the Senate of April 1, 1854, communicating the foregoing letter of Ward, President Pierce wrote (Executive Journal, IX, 276):

That part of the document which purports to recite my official instructions is strictly correct, that which is avowedly unofficial and unauthorized, it can hardly be necessary for me to say, in view of the documents already before the Senate, does not convey a correct impression of my "views and wishes."

At no time, after an intention was entertained of sending Mr. Ward as special agent to Mexico, was either the Garay grant or the convention entered into by Mr. Conkling alluded to otherwise than as subjects which might embarrass the negotiation of the treaty, and were consequently not included in the instructions.

While the departure of Mr. Ward under any circumstances, or in any respect, from the instructions committed to him is a matter of regret, it is just to say that, although he failed to convey in his letter to General Gadsden the correct import of remarks made by me anterior to his appointment as special agent, I impute to him no design of misrepresentation.

Ward's advocacy of a great indemnity for the Garay Grant was a sore trial to Gadsden; Ward's representations led to an "unofficial interview" between Gadsden and Santa Anna on the question of the two grants; the views of both are set forth in Gadsden's private despatch of November 20, 1853, the relevant portions of which follow (D.S., 18 Despatches, Mexico):

I despatched Mr Bowes<sup>1</sup> after some labor: with all his documents: with other Public papers in time for the Steamer of the 22<sup>d</sup> and he will explain how other documents but of no great importance could not be prepared in time (under the office pressure on me— As there is a rumor that the Steamer for 22. Cannot leave before the 23 or 24—I have pushed with the papers alluded to and now accompanying; and avail to write you my usual private lucubrations— I wrote the President a long letter<sup>2</sup> by Mr Bowes: & particularly in relation to the introduction & settlement of private claims in any satisfactory arrangement I may be fortunate enough to make on the difficulties originating in the Treaty of Guadalupe & for extension of Boundary— What are usually denominated monied claims of private Individuals such as are provided for in the Treaty of Guadalupe: I was induced to believe could be embraced in any Treaty of Settlement which could be concluded— But Claims & Grants of Greater magnitude, such as the Teheuntapac Right of Way, were very Embarrassing— This Government was committed against the recognition of the Garrary—& in favor of the Sloo—& could not be induced to recognise the former without the repudiation of the latter & for which they had received a large consideration— In granting the latter, they had to go through the previous process of repudiating the Elder— Having repudiated, and somewhat obstinate in their right to do so: you perceive the difficulty of getting on a platform by which indemnity for the wrong enacted should be awarded— This difficulty was enhanced instead of relieved by Mr Ward: who instead of lowering down the pretensions and extravagant appreciation of the *Grant & indemnity*; magnified them 5 or 6 fold beyond what I am satisfied the President could even be induced to entertain— For though Santa Anna justifies the repudiation: having however nothing to do with it: he would be startled with a suggestion to pay 5 millions (Mr Wards indemnity) for what his Predecessor sold for 600.000 dollars: & which was the consideration which tempted the Mexican Government then in the ascendant to do the act of asserted injustice to Garray & Claimants under him— I have in all my communications informed you: that *money: & money* alone would be the sole inducement, on the part of Santa Anna to relinquish Territory & dismember further the Mexican Republic— If however of the sum which we are willing to pay him for the *lesser session* (the only one I feel sanguine about: & which is very liberal: 5 millions is to be deducted for the Cormorant appetite of Ward & Co. & some 3 millions for legitimate & urgent private claims—we might as well abandon all efforts to reconcile Higher objects if: if Private Grants with extravagant profits: are to be considered paramount objects— Indeed to hear Mr Ward talk: and seemingly under the confidential cloak of a private Messenger. You might suppose that my Mission—was for the Garray grant, if not at the sacrifice of higher claims: at least so to be connected as to render the recognition or adjustment of the latter indispensable with the former.

I fear the whole of this Mission or Messengership originated in a Mistake or misconception of my communication, asking for the *instructions on private Claims*

<sup>1</sup> Charles E. Bowes was a Special Agent sent to Mexico in connection with certain claims (see Wriston, Executive Agents in American Foreign Relations, 835).

<sup>2</sup> Not found.

promised in your first *letter of General Instructions*—and in which you intimated the embarrassment of the Administration growing out of the Sloo grant & recognition under my Predecessor— I thought I had penetrated Your views therefore in studiously avoiding even attending to that Grant (which had in the past held too prominent a position in our relations with Mexico: and had seriously interfered in my opinion: with the higher affinities with this Republic— In one of my first Communications, though hastily prepared on early impressions, I adverted to Private Claims and their indiscreet advocacy by those who have preceded me in this Responsible Mission: as the fruitful source of the distrusts which existed between Two neighbouring Republics, whose interests it was to harmonize— Indeed they were paramount by the Record: to all those national friendly Relations (and often disturbing them) which it was the object of a Mission to preserve— But to return to the Teheuntepec: (the King of these claims) Mr Ward's interviews and verbal communications; which are emphatic to the point that the President has not received the Sloo Grant as a Substitute: of the Garairy and will not approve of the Convention made by Mr Conkling as a substitute: I was encouraged or induced to have an unofficial interview with the President on this vexed Question: a detail of which is in my letter to the President— From that you will see that Santa-Anna; says he had nought to do with the substitute— But that he came into power under the assurance: that the Sloo Grant was made to supercede the Garairy—at the instance of those, including My Predecessor that it would be acceptable to the U States: as Satisfactory for all the interests manifested in favor of that Grant, & that hence he had supposed that difficulty *settled* & in harmony with the U States— Though he seemed to think that however justified was the repudiation (for non fulfilment of conditions) of the Original Grant; yet that if the US. rejected the substitute made as an attonement; that the Question would be and might be reopened: I have concluded to give Mr Ward the benefit of an official communication <sup>1</sup> That the President has not approved of the Convention in favor of the Sloo Grant: or recognized that Grant as a superceder of the interests the Government of the U States have taken in favor in the past of the original grant to Garary— If on that, Mr Ward or the Representative of the American interests in the Garay Grant can get a recognition or renewal of it by the President; repudiating the substitute by both parties I will accord to the arrangement— I have gone into this detail that the Administration may not commit itself on the Sloo Claim (now openly avowed as having been transferred to a British Claimant; in order to meet obligations to British Subjects) incurred in paying for the Grant— As those payments were made here, under the assurance from My Predecessor; however unauthorized, that the convention was made with the approbation of the US Government: I have exacted or will exact that those Bankers be protected, not in acknowledgment that the Government is really responsible or feels themselves so; but to relieve of the Mortification that a Minister should have so committed his station or position in behalf of a Grant & the Grantees as to have made his high place subservient to their speculations— By these details you will understand my views: and that they are maid that you may be prepared for *possible* arrangements on this vexed subject, which might otherwise interfere with higher aims— I feel sensibly my Reponsibilities— I think that my views are in harmony with those that prevail in the Cabinet & if my judgement has failed the Administration which it is my object to represent must extend the usual indulgence for honesty of purpose at least—

In relations to Historical incidents in this quarter where it is so difficult to obtain facts I have only to report my convictions that things remain as they were; full of speculation & uncertainties— The President I think is more pacifically disposed to the US. but from necessity— Has awakened to the truth that he can only rely on us to sustain himself in power— He is evidently still distrustful— Arrests & banishments of suspected Individuals of Power Continue—and though without means to maintain; his ambition for Ulterior designs, which he dreams of in his seclusion, is for a Military Power— His progress in raising recruits is slow: and his Embarrassments thicken on him in early appoint-

<sup>1</sup> The reference appears to be to the relevant portion of Gadsden's note to Bonilla of November 29, 1853, which is printed below.

ing Officers for the Army he desired to raise— Hence in walking the streets of Mexico you would estimate a force (from the officers) of 15 to 20000 men when, not to exceed 4000 can be paraded— . . . I am to present my Budget to the President [Santa Anna] next week based on the 4 propositions of boundaries— I have to put my Engineer Antecedents <sup>1</sup> in requisition, as the President requested that Each Boundary proposed should be accompanied by a map to avoid the confusion of all on the Same This scrawl has been written in great haste to be prepared in time for the mail now on the eve of closing

In considering Gadsden's difficulties with Ward it is to be remembered that weeks before Ward arrived at Mexico City Gadsden was committed to a global treaty adjustment between the two countries. The opening words of the "Memoranda" presented to Santa Anna on October 2 (printed above) evidence this; also on October 17 (in his quoted despatch No. 10) Gadsden wrote: "I have conveyed my assent to an adjustment of all the disagreements between the Two Governments in one Treaty", giving as his reason that he knew this to be "in harmony with the policy of the President"; and that Gadsden well understood that such an adjustment necessarily included the Tehuantepec question is clear from his suggestion for the reconciliation of the interests in the two grants, made in his private despatch of October 3 (quoted above).

The record of the instructions to be transmitted by Ward makes it equally plain that the only claims against Mexico which it was desired at Washington to release were those "arising under any articles of the Treaty of Guadalupe Hidalgo"; it is also therein expressly written that it had not been deemed expedient to complicate the negotiation "with any other matters than a change of boundary, and the reciprocal claims which have arisen under the present Treaty of Peace and limits"; this would have left open all questions under the two Tehuantepec grants; and after the date of the treaty but before he knew of its signing, Marcy wrote <sup>2</sup> (D.S., 16 Instructions, Mexico, 442-45, January 6, 1854, in full in Manning, *op. cit.*, IX, 156-57):

I am apprehensive that the persons interested in the two Tehuantepec grants have agents in Mexico who have extraordinary facilities for getting information, and will use all possible means to have such a turn given to the pending negotiations as will forward their respective interests. It was the apprehension of embarrassments from this source which induced this government to disconnect the negotiations you were to conduct, from these grants. I trust you will be able to surmount all the difficulties which have arisen or may arise from this cause.

Gadsden, however, was committed in advance to a negotiation embracing *all* differences; he naturally felt bound (by the cipher instruction) to take what Ward told him as coming from the President; though an indemnity for the Garay Grant was not within the recorded instructions of Marcy, some adjustment of the question was quite in line with the position which Gadsden had taken, both with Santa Anna and in his communications to Washington; it was the demand of

<sup>1</sup> Gadsden had begun his service in the Army (1812-22) as a lieutenant of engineers.

<sup>2</sup> See also his instruction of December 22, 1853 (printed below), which is very precise as to the American claims that he intended to have dealt with in the treaty.

\$5,000,000 to satisfy the "Cormorant appetite of Ward & Co." that was staggering.<sup>1</sup>

After a "lengthy conference" with Gadsden (on November 26 or thereabout; the exact date does not appear), Santa Anna decided to appoint Plenipotentiaries for the negotiation. In anticipation of formal notification to that effect, Gadsden under date of November 29 wrote this long note to Bonilla, part of which Gadsden styled "a chapter from President Monroe's Manifesto" (D.S., 18 Despatches, Mexico, No. 15, December 4, 1853, enclosure):

The Undersigned Envoy and Minister from the United States of America: after a delayed response for some months: to propositions to arrange the existing disagreements between the two Republics, with gratification, though in some degree disappointed, has been informed that His Excellency will be prepared in a few days to nominate Commissioners, with full powers, to adjust the amicable relations between the countries on *one* of the Five Propositions, with explanatory maps, which has been submitted to the Supreme Government of Mexico <sup>2</sup>—

The Undersigned has however to express his deep regret, in consideration of a policy which was more strongly recommended to the United Mexican States than to those of North America which he represents— That Proposition No *one* defining a natural Territorial Boundary, imposing in its mountain and desert outlines, and which would settle permanently all border issues existing and

<sup>1</sup> In the treaty as signed, the private interest represented by Ward fared well enough, for the sum of \$5,000,000 was allocated for American claims, with express mention of the Garay Grant; but of those advantages nothing remained in the final text.

At a later date Gadsden wrote bitterly of the designs of Ward; this is from his unofficial despatch of July 11, 1855 (continued on various dates to July 17; D.S., 19 Despatches, Mexico):

the interference of Mr Ward & Escandon in the late treaty, with a view of casting me under the influence of the latter— Had I not penetrated the designs of that interest there would have been a provision in the Treaty for 3 millions of indemnity to Hargous on Tehuantepec: in which Escandon, Santa Anna, & possibly Ward would have participated— I saw a letter of Wards to Bonilla (which shows he had profited by a brief residence here:) when he found that Bonilla (as Commissioner) and not Santa Anna was to be influenced— These details of history are necessary to put you on your guard against influences: which would have misled me: had I not at an early period discovered the private diplomacy, to affect public interests— I have thus exposed myself to a private opposition, which has gathered strength by the impression, that the Public are led to believe that the President secretly disapproves of my Course: and only awaits a more favourable occasion to publicly manifest it—

<sup>2</sup> It seems plausible to suppose that the "Five Propositions" were those of the recorded instructions of October 22, 1853 (printed above), namely, the four numbered lines and the final alternative of a line from 31°48' (or 32°) on the Rio Grande; but it is more likely that Gadsden did not suggest the line of 31°48' (or 32°) at all; see his objections to such a line in his despatch No. 4, of September 18, 1853 (quoted above); the four numbered lines might easily have been made into six propositions by drawing No. 1 *without* Lower California and No. 2 *with* Lower California. Copies of the maps accompanying Gadsden's propositions are not available; perhaps there were only three maps, for it appears from this note of Gadsden that the line of proposition 5 was drawn in blue on map 3.

The archives of the Embassy at Mexico City for the period beginning with the arrival of Gadsden and ending on January 4, 1854, include no maps, no memoranda of conferences, and no correspondence between Gadsden and Christopher L. Ward (D.S., file 026 Treaties/2146, despatch No. 6884 from Mexico City, dated June 21, 1938).



which may arise in the future, had not been accorded to, As the basis of negotiations now to be consummated— Recent transactions against which His Excellency, in anticipation, so Justly and so frequently remonstrated, and which the Government of the United States with all its solicitude and with all the vigilance of its Public authorities, has not been able effectually to arrest; and the issue of which as instigated alike by Citizens of the United States States in co-operation with individuals of all Nations, embarking from California, and thus erroneously registered as the Citizens of a neighboring Government no one can foreshadow— They may at this time be in possession of one or more of the disaffected States of this Republic or may have been but temporarily discomfited, though not subdued— These occurrences, and so long threatened, without an ability to avert, it was hoped had awakened the Supreme Government of Mexico to the influence of a spirit *internal* as well as *external* the attempt to check or impede which, was only to be recognized in that *political and harmonious policy* by which the Government of the United States, however reluctantly, was willing to incur the responsibilities and burthens it imposed— Cautioned, if not admonished, by the past success of a popular progression, which receives its impulses, from the enlightenment and advancement of the age, and which gathers strength from opposition, The Undersigned had confidently relied on being met by a corresponding desire or policy on the part of the Supreme Government of Mexico, to conciliate and harmonize, what was not to be diverted; overawed or crushed— Whatever may be the influences of a policy so strongly recommended: and so well calculated to remove, and forever, all irritating causes of Border differences; Stimulated alike by the citizens of both countries: A spirit of agrandizement has had no motive in instigating propositions; transferring high Governmental responsibilities, which the United States would gladly avoid; but which were presented in all that friendship and candor of feeling, which it was hoped would have met with a cordial response from the other side— To distrust a neighbor: or to suspect covert designs of Territorial agrandizement; in an unconcealed policy, which so strongly recommended the extension of domain to a well defined natural and approved limit between two neighboring States; is a diplomatic motive to arrest, that which an unerring destiny has made inevitable— To accept the proffered assistance of other powers: or to seek their cooperation, (as there is Just reason to beleive has been done) to put down the irregular designs of Foreign Individuals because American; in concert with the citizens of the Border Mexican States; whose sympathies and affinities are daily inclining to a more Northern Republic: will only prove the more animating to those: who Justify to the world their denounced aggressions; by the alluring invitations from bretheren, who claiming the favored Land of promise; are willing that others should share and possess— The precipitancy with which a charter for a Rail Road was recently granted to a British interest; in the face of a decree inviting within a limited and unexpired period; the most favorable offers from Citizens of all nations; who might be induced to embark on the enterprize—The provisions of that concession: which expose the foreign influences, and considerations for thus avowedly excluding; after public invitation, all participation in the work by citizens of the United States—The anxious endeavors now maturing to transfer concessions made to A G Sloo and his associates to British control; and in the face of an appeal, that this grant was a courteous concession from the Supreme Government of Mexico in substitution of the Elder to Garay—The fact that the repudiation of the latter, was not decreed untill the proprietorship was in the hands of American Citizens: and after the British Minister refused to foster and protect the enterprize, when under the control of a british Subject; are all indications of motives adverse to American interests; and more calculated to stimulate the desire to possess and to advance; than to check a spirit of adventure, which seems to be so distrusted, and so full of dreaded apprehensions; as to invoke the assistance of Foreign interposition— The Government of the United States is popular in all the stimulating elements of its political structure— The irregular: and to be regretted expeditions from its shores; whether composed of its own citizens; or of those who abuse the protection extended them, interfering with the internal polity and management of other countries; will ever become respected, and controlling influences in the Government, whenever those hazardous adventures, on Individual responsibility, are in accordance with the spirit of the age, and the

institutions which regulate, and rule at home— That spirit however erratic: and impatient, only precipitates coming events; (the bow in the East) which are not to be overawed or subdued by an impolitic and ineffectual resistance, from which it only derives additional encouragement: but from a more advised policy which conciliates, and legitimatizes— The Government of the United States, in a wise forecast will ever prefer, at any cost, the legal and pacific appliances: anticipating inevitable results: to the having of these forced on her by the irregular and unlawful proceedings of ardent and impatient individuals— The latter comes in conflict with order, and law, which it is the interest and duty of all nations to preserve at home, as well as abroad— Treaties are but the Supreme Statutes between nations and the far reaching mind of a prudent Statesman: will anticipate outbreaks, in preference to abide the time and necessity of subduing them— By this process and policy they make the law: which those who are the violators of law and order, may force on a Country, through a carrier of insubordination, and irritations which no power has been able to arrest—

We have had presented recently an instructive admonition in a neighboring Island of the Antilles— The fate of the ill advised expedition of Lopez (apart from the inhuman retributions which fell on the deluded victims:) met with little sympathy in the Northern Republic— The annexation of Cuba while opposed at that crisis in one quarter of the American Union; was a subject of indifference to an equally powerful section in another (which was supposed to be most favorable) has now become the predominant sentiment of the whole Union— Stimulated by the suspicions of Foreign attempts to influence adversely the counsels of Spain; and to interfere with the domestic policy of the Island— To such an extent have these suspicions stimulated the People of the United States to annex Cuba, as one of the confederation; that the British Minister at Washington, has found occasion to disavow any such designs of interference, on the part of the Enlightened Queen, he with so much ability and courtesey represents— The Gifted Premier of Great Britain: who with a searching and far reaching sagacity: penetrates and profits: from the tendencies, and the advancement of the age: would be foremost to reprove an attempted interference in the relations between the Two Contiguous Republics of North America, and particularly on an occasion; when the earnest endeavors of both, are invoked to reconcile on the basis of mutual confidence; and fraternal neighborhood; existing and disturbing border derangements— It is in the sincerity of this friendly spirit, that the Undersigned desires to meet the Commissioners on the part of the United Mexican States, feeling assured that a corresponding response, on their part, can alone ensure a favorable consummation of the negotiations now about to be entered on— The Undersigned had therefore cherished the hope: That the supreme Government of Mexico: deeply impressed and influenced by these considerations, would have appreciated the candor, and the motives, which on all occasions, have been manifested on the part of the United States, to arrange the friendly and neighborhood relations of the two Sister Republics of North America, on a basis so undisturbed and immovable, as not to leave open, for future issues, a repetition of Texan history in the six border States including South California— Though the Undersigned can scarcely now hope, that the Supreme Government of Mexico will reverse its determination to treat on any other basis of territorial limits than that embraced in proposition Five (5) with the lines of demarkation in color blue in map Three (3) He accepts of this selection, but with the sincere and honest declaration, which the occasion demands; That no Treaty on those limits can prove other than a temporary expedient to reconcile existing differences; while the disturbing causes of probable border feuds remain unremoved— Indian disturbances and fourays on the Mexican border States at home; and incursions from abroad, will continue unrestrained— Savage alarms and depredations will multiply:—The sparse Mexican population, incapable of self protection: and unsustained by emigration; which a mistaken policy prohibits, will increase in disaffection; and each State on every favorable occasion, will successively pair off: from a nationality, to which in the past they have paid a willing allegiance: to seek new alliances with a Northern Neighbor: for which natural and political affinities are presenting daily attractions

In accordance therefore with His Excellency's invitation to confer with a Commission: on a basis of adjustment accepted; it will be both important and

appropriate to present in advance what are the immediate, and existing disagreements now to be reconciled— These have their origin in the adverse interpretations which have been given to the 5<sup>th</sup> 6<sup>th</sup> and 11<sup>th</sup> articles of the Treaty of Guadalupe Hidalgo— Justly repudiating, as the United States has done; the demands for indemnity to Mexican Citizens: for Indian Spoliations made under the (11<sup>th</sup>) *Eleventh Article*—objecting as the United States has in reason: to the actual nullity of the *sixth* article and to the erroneous defining of the (5<sup>th</sup>) Fifth article, it has been proposed to reconcile all these misunderstandings: in the spirit and intent of the (21<sup>st</sup>) *Twenty First Article*: by an abrogation of the *Eleventh* (11<sup>th</sup>) article: and by an extension of the boundary, so as to embrace all the objects which were contemplated: and which in good faith, it was supposed on the part of the United States, had been, and were embodied in the provisions of the Fifth (5<sup>th</sup>) and Sixth (6<sup>th</sup>) articles— His Excellency will hardly contend, that the right of way for a Rail or Military Road, conceded in the Sixth (6<sup>th</sup>) article could, in accordance with its spirit; be made a *nullity* or *abortion* from a *restriction*, which must have been unintentional, as defeating what the U States believed had been granted:—or that a boundary defined by the Fifth (5<sup>th</sup>) article was to be narrowed down and restricted, by a decision of one of the parties; and in a mode and manner; not recognized or sanctioned by the provisions of the Treaty—To ascertain and determine the *agreed line*, as defined and understood by the opposite party—

The other unhappy disagreements are in the private claims of American Citizens: which it is desirable and important to adjust with the other differences originating under the Treaty of Guadalupe— Prominent among these, is the Tehuantepec Right of Way, conceded by what is known as the Garay Grant: which was legitimately transferred to American Citizens: and acknowledged to have been parted with, at the Treaty of Guadalupe; when propositions were made by the Commissioner of the U States to include, for an *adequate compensation*, that right of way: in the negotiations then pending between the Two Governments— Confiding, in good faith in the declarations then made on the part of the Mexican Commissioners: an interest in protecting the said Grant legally transferred to Citizens of the U States, and in process of prosecution, was early thereafter manifested on the part of the Government, which owed them protection

A Convention <sup>1</sup> for said purpose was entered into between the two Governments: and in perfect good faith on the part of that I have the responsibility to represent but without cause or Justification, was actually repudiated afterwards, by the then existing Government of Mexico— As the convention made subsequently by Mr Conkling, recognizing the Grant to Sloo and associates, was without authority: has not been recognized by the President of the U States, is about to be transferred to British interests; and cannot and will not be received as a substitute for the Garay; the proprietorship of which remains with Citizens of the U States: the interest of the Government of the U States in the latter concession remains unchanged, and unimpaired: and it is therefore confidently expected that the Grant will in Justice be confirmed to the American Assignees under Garay: so that the noble enterprize, originating with: and projected by His Excellency the President; will be permitted to be prosecuted under the first auspices; as a monument to the Patriotic spirit, and far reaching sagacity, which first conceived it— With this there are unadjusted private claims of Citizens of the U States to a very large amount; which have originated since the Treaty of Guadalupe, and which are not, for the first time, now brought to the consideration of the Supreme Government of Mexico— It is proposed that all these disagreements originating under the Three (3) articles of the Treaty of Guadalupe, to which reference has been made, be reconciled by an extension of Boundary to be agreed on: and an adequate Sum to be paid for the same, including the relinquishment of all obligations under the (11<sup>th</sup>) *Eleventh Article*—That the Garay Grant be confirmed to the present American proprietors; or any appropriate indemnity be paid for the damages and losses sustained by the repudiation of it—and that an adequate sum be allowed for the U States assuming all the unadjusted private claims of American Citizens against the Government of Mexico— To prevent misunderstanding it has been deemed appropriate and

<sup>1</sup> Signed at Mexico City January 25, 1851 (D.S., Unperfected I2).

important thus, in advance, to state what are to be the subjects of negotiation with which the Commission is to be charged: so that the Commissioners on the part of the United Mexican States, may be as well prepared: and as favorably disposed, to confer on and to adjust the same to the satisfaction of both Governments as is the Minister who will represent the interests of the United States

The Undersigned cannot conclude this preliminary note on the settlement of the existing disagreements between the two contiguous Republics: whose interests are to be reunited by the Stronger ties of Fraternal neighborhood: without repeating the hope that His Excellency will maturely reconsider the Five (5) propositions, which have been presented on the part of the U States, and empower the Commissioners to be nominated on the part of the United Mexican States, to negotiate on the basis of either of them: but more advisedly on Proposition N<sup>o</sup> one (1) with the strong, and unchangable natural boundary designated in Color green: in Map N<sup>o</sup> one (1) as the only limit or demarkation: between the two Republics of North America: which will not only conciliate existing disagreements but remove all causes of future border dissentions— A Limit, which will most effectually check all further desire for expansion on the part of all Citizens native and adoptive of the U States—which will receive from Mexico, such States only as are desirous or willing to be transferred to another Jurisdiction; and which are now a burthen and expense to Mexico—Which will impose those Governmental responsibilities on the U States, with all the expense of protection and of preserving order, where desolation, depression, and anarchy are said now to prevail: and to be on the increase; and which would enable Mexico to consolidate her strength in the older, more populous and richer States, retained: and thus to receive a new impulse in the career of modern advancement— The two great and neighboring Nationalities; of vast internal capabilities; would present a new spectacle of noble rivalry and improvement in the science, and the arts of productive industry; unembarrassed by those border feuds which in the past, interrupted neighborhood tranquility, and which must continue to do so; while the natural boundaries which mark the appropriate, and enduring limits of nations, are unadjusted as nature and an enlightened policy would seem to define; and to so strongly recommend— With renewals of high consideration and regard

Gadsden's note of November 29 was deemed very offensive and was not answered; it was characterized by Bonilla in an instruction to Almonte of October 3, 1854, as "nothing more than an insult to this Government, to this nation, and to the whole Spanish race" (D.S., 7 Notes from the Mexican Legation, translation with note of Almonte of October 23, 1854; Manning, *op. cit.*, IX, 171-74); in that paper the Mexican Minister of Foreign Affairs set forth at some length "the just grounds of complaint" against Gadsden, whose recall<sup>1</sup> was requested. The reasons of Gadsden for his note of November 29 are thus given in his cited despatch of December 4, 1853 (printed in part in *ibid.*, 677-78):

The order for a Commission to meet and negotiate on the existing disagreements between the two Countries: was after a lengthy conference with His Excel-

<sup>1</sup> Requests for the recall of Gadsden continued to be made during the regime of Santa Anna and thereafter (D.S., 8 Notes from the Mexican Legation, May 14, 1855, from Almonte, and May 9 and June 27, 1856, from Manuel Robles Pezuela, the successor of Almonte; Manning, *op. cit.*, IX, 767-69, 832-33, 838-39). On July 2, 1856, Marcy wrote to Robles that "measures will soon be adopted with the view of complying with the wish" of the Mexican Government (D.S., 7 Notes to the Mexican Legation, 78-79; Manning, *op. cit.*, IX, 206); Gadsden had been informed of his recall on June 30, while he was in Washington (*ibid.*, 205); he returned to Mexico City and was succeeded by John Forsyth, of Alabama, who was appointed Minister to Mexico on July 21 and reached Mexico City on October 15, 1856.

lency the President— I deemed it advisable therefore to anticipate the notification of an appointment of a commission by a communication with my acceptance of the invitation to meet the same; which you will see in correspondence R— You will consider my Statement of disagreements to be adjusted: and the remarks on the policy which has influenced the U States on the basis of the Treaty to be concluded with the animadversions on foreign interference, very appropriate as a preamble on this occasion of negotiations to be entered on— That there has been an interference in the private parlors of the Palace on the relations between the two Sister Republics, and an anxiety evinced to stimulate the distrust on the part of Mexico: to the institutions and the policy of the U States—I have every reason to more than suspect— It was considered advisable therefore to read to the Representative of the Government with whom I was about to treat a chapter from President Monroe's Manifesto: and to enlarge on the liberal policy of a progressive and enlightened age: on which I had found myself called upon, in a previous correspondence (Q) to make reference— There is certainly a disposition in those who now control in the councils of this Supreme Government (and encouraged by concealed foreign influences,) prejudicial to the institutions: and policy which rule in the U States— We have little to hope from either the *Justice* or *intelligence* of the Minister of Foreign Relations: who is at the head of the Commission nominated to treat with me: and his appointment is an evidence, at this crisis, of the influence he exercises over the President— I look therefore to a more protracted negotiation than was at one time anticipated: when I had expected to treat with the President direct: still the conferences had with him have proved favorable to a progress thus far, to some satisfactory termination of the disagreements between the two countries— Patience will be necessary: for at this time The President and the cabinet: think and dream only of the Dictatorship, with the Empire, which is to follow

Regarding the appointment of the Mexican Plenipotentiaries and the time and place of meeting there was this formal correspondence of November 30 (Bonilla to Gadsden, translation) and December 2 (Gadsden to Bonilla), which is also with the last-cited despatch:

*Confidential*

NATIONAL PALACE,  
Mexico, November 30, 1853.

To His Excellency Mr. JAMES GADSDEN,  
Envoy Extraordinary and Minister Plenipotentiary of the United States  
of America.

The undersigned Minister of Foreign Relations has the honor to address himself to His Excellency Mr. James Gadsden, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, to inform him that, His Excellency the President of this Republic having taken into consideration the very urgent request made to him by His Excellency relative to the portion of land needed by the United States for the construction of a railroad on the northern frontier, and the President being desirous of granting that request so far as it may be compatible with the security, independence, interests, and rights of Mexico, and at the same time considering that it is not proper nor fitting that a matter of this nature be negotiated directly with His Excellency, has seen fit to appoint a Commission composed of the undersigned as Plenipotentiary *ad hoc*, of Messrs. José Salazar Ilarregui<sup>1</sup> and Mariano Monterde as Expert Commissioners,

<sup>1</sup> José Salazar Ilarregui was Surveyor for Mexico under the Treaty of Guadalupe Hidalgo, was one of the three Plenipotentiaries of Mexico who signed the Gadsden Treaty, and was subsequently Boundary Commissioner thereunder. In publications printed in the United States the name "Ilarregui" is to be found in a variety of forms.

As written in the signed original of the Gadsden Treaty (preamble), the spelling appears to be "Ylarregui" in the English version and "Ilarregui" in the Spanish; as written in the Mexican instrument of ratification it appears to be "Ylarregui" (preamble and indicated signatures); as lettered in the titles of the boundary maps

and of Mr. Lucas de Palacio as secretary, conferring on the first three the necessary powers to negotiate and sign with His Excellency the agreement which is decided upon.

Accordingly the undersigned has the honor to inform him that, beginning with the 5th of December next, when the correspondence of the English packet shall have been attended to, the said Commission will be ready to meet with His Excellency at the place and on the day which he may indicate to begin their conferences, at the same time placing at his disposal the premises of this Department, if he should consider it convenient for the purpose indicated.

The undersigned renews to His Excellency his very distinguished consideration.

MANUEL DIEZ DE BONILLA

LEGATION U STATES  
Mexico Decemb: 24 1853.

To His Excellency

MANUEL DIEZ DE BONILLA

The Undersigned Envoy Extraordinary, and Minister Plenipotentiary from the United States: has the honor to acknowledge His Excellency's communication of the first of Decembre [November 30]: advising, of His Excellency the President: having associated Don José Ilarregui, and Don Mariano Monterde: as Commissioners with His Excellency Manuel Diez de Bonilla; Minister of Foreign Relations: Don Lucas de Palacio to act as Secretary: to confer with the Representative on behalf of the U States on the preservation of the most pacific relations between the two neighboring Republics— The Undersigned with his Secretary John S Cripps Esqr will cheerfully meet the Commission of which His Excellency is the head: on any day which may be named after the fifth of the month, as has been proposed, and in the apartment in the palace which has been appropriated for the accomodation of said commission— The Envoy and Minister on the part of the U States avails of this occasion to invoke on the counsels of this Joint Commission charged with the high responsibilities of preserving the peace and friendship between two Neighboring communities: a spirit which will guarantee that happy consummation on a foundation so strong and enduring as not to be disturbed or interrupted in the future

With renewals of high consideration

JAMES GADSDEN

The Plenipotentiaries held six conferences, on December 10, 16, 22, 23, 24, and 30, the last for the signing at the American Legation of the terms agreed to on December 24; the conferences were protocoled; and for those of December 10 and 16 there is also this report in Gadsden's despatch of the latter date (D.S., 18 Despatches, Mexico, No. 16, excerpt):

In reference to contents N<sup>o</sup> 15 I have only to report that the Joint Commission on the part of Mexico, and of the United States, had a meeting on the 10<sup>th</sup> Instant: at which the respective powers of the Representatives of both Govern-

under the Gadsden Treaty, it is "Ylarregui". In examples of the original signature the initial letter appears to be Y rather than I.

Relevant in this regard is the following from Gramática de la lengua española, nueva edición, reformada (Madrid, 1928), page 523 (translation): "It is a bad practice to use as an initial letter, in handwritten material, Y instead of I. So one should write not Ygnacio or Ysabel, but Ignacio, Isabel."

In four Mexican treaty collections, all of them official publications of the Government of Mexico, the spelling of the name is consistently "José Salazar Ilarregui" (Tratados y convenciones concluidos y ratificados por la Republica Mexicana, 259, 263, 267; Tratados y convenciones vigentes, 1904 ed., 26, 31; *ibid.*, 1909 ed., I, 256, 261; *ibid.*, 1930 ed., I, 161, 163).

Except in quoted matter, the spelling used in the present publication is "José Salazar Ilarregui".

me. were exchanged and recognized— The Conference was opened with my presentation and with the acceptance on the part of the Mexican Commissioners of a projected Treaty carefully drawn up and reconciling in the most liberal Provisions all the disturbing issues between the Two Governments and for which in behalf of the U States a most adequate consideration was offered— The Instrument was received for examination, and on this day the American Envoy and Minister was invited to another conference— The result was as anticipated a most extravagant appreciation of the Cessions and grants negotiated for and which were encouraged by communications from the Mexican Minister at Washington professing to know the extent to which the American Minister was authorized to advance in payment of the concessions to be made, and that if he offered a less sum and the Mexican Commissioners insisted on the larger, for the domain alone, it would be acceded to and that an indemnity for Indian depredations could be negotiated, for and with more success through Gen Almonte at Washington— The influence of this recommendation was very apparent in the conferences of this day in which a most extravagant value was placed on the domain alone *more than double the sum I had named* in consideration of all the grants, and relinquishments to be made in the Treaty proposed— There was evidently a covert design throughout the whole conference to separate the questions at issue and to divide the consideration to be paid, for each, estimating for the land alone (with some unexplained restrictions on the boundary indicated) at more than double the sum, I had offered for all, though this amount influenced by the last advices received from you, had been made much more liberal than my Judgement had originally sanctioned— The attempt at diplomacy during all the discussions and the extortionate pretensions for a Territory alone (full half of the only valuable portion of which has already been parted with to Private Individuals) would have prompted me to close all negotiations, met with a spirit so adverse to equitable adjustment; had not another interview been sought, so as to afford the opportunity of reexamining Maps and revise an estimate of the quantity, quality and appreciation, which the Mexican Commission had placed on a worthless Domain alone— These proceedings after the preliminaries of the basis, on which we were to treat, had been accepted and acceded, to, and stimulated evidently by influences from Washington, do not accord with the assurances you have so frequently received in that quarter, that the Supreme Government of Mexico was anxious to settle all existing issues on the most reasonable and friendly terms— Up to the last week that spirit apparently prevailed, and the progress of negotiations to a favorable termination, were very encouraging to this Legation— The sudden change in the disposition of the Mexican Commissioners is only to be explained by the recent despatches from the City of Washington, which (there is every reason to believe) have been influenced by a deep speculation in Embryo in most fraudulent claims to a large amount for Indian depredations, encouraged by the hope that they may be imposed on the U States, with greater success, at Washington than at this Capital, as it is well ascertained that I have in all my correspondence with the Minister of Relations boldly repudiated any obligations on the part of the U States to pay an indemnity for Indian depredations committed on Mexican Citizens— This repudiation was sustained by arguments and Just interpretations of the 11<sup>th</sup> Article of the Treaty of Guadalupe (on which the claim has been raised) and which the Mexican Minister of Relations has not been able successfully to rebut— It has been strengthened by more recent additional evidence, that most of the depredations committed were by Indians residing or encamping within the Mexican Territory, on Haciendas which had been abandoned and thus invited attack, and on a people who had been disarmed and to whom little or no protection had been afforded by the Government who owed it to them— If the Government of the U States admitted the obligation to pay for all the depredations committed by the Indians whose incursions they were bound to restrain not one third ( $\frac{1}{3}$ ) of the claims submitted could be proven or sustained, before any Court of adjudication either as to the legitimate amount of damage suffered or as to the party who inflicted it— I have had the opportunity of inspecting some of these claims carefully prepared under decrees or circulars, from the Minister of Foreign Relations, and verified by the second officer of that Department, that did not contain any legal evidence of the fact of depredation beyond

the oath of the suffering party or as to what Indians were responsible— The amounts of losses in the estimation were more than preposterous, and among some of the items were annuities charged by Proprietors for having abandoned their Haciendas, and property, which thus unprotected, invited depredation without any evidence as to who may have committed it— In a country where from the number of robbers watching for prey, it is hazardous even to travel the public highways without arms; the probabilities are that these were in many instances the *disguised Savages* that plundered what was left so insecure— Could the asserted claims for damages under the 11<sup>th</sup> Article of Guadalupe be stripped of all the disguises through which they are presented, I am fully within the limit in the assertion, that not three millions in value could be sustained or recognized before any Tribunal of Legal investigation—

Only one article of the "projected Treaty" which Gadsden presented to the Mexican Plenipotentiaries is textually available.<sup>1</sup> In D.S., 18 Despatches, Mexico, following despatch No. 16, of December 16, 1853, are two papers (printed in Manning, *op. cit.*, IX, 681-83, footnote), the first of which is apparently a translation of an instruction (or the opening part of one) from Bonilla to Almonte, dated December 16, 1853, enclosing Gadsden's draft treaty; the other is headed "A project of treaty proposed by General Gadsden, to which reference is made in the despatch directed to the Mexican Legation", and below that caption (preceded by omission signs) is this involved, diffuse, and crude proposal for the revival of the Garay Grant and reimbursement of the \$600,000 paid under the Sloo Grant:<sup>2</sup>

<sup>1</sup> Perhaps another, which is certainly by Gadsden, is this, misfiled among other papers following an instruction of December 8, 1853, in the archives of the Embassy at Mexico City (D.S., file 026 Treaties/2150, enclosure to despatch No. 7316 from Mexico City, dated September 3, 1938):

That the two Contracting Parties shall at the earliest practical day, run unitedly a line of mail steamers through the Circuit of the Gulf of Mexico from New Orleans: touching at Cital [Sisal, a port of Yucatán] on one week to New Orleans and on the alternate week from said City via Cesal back to N. Orleans. That the said Steamers shall be considered a Mixed Line under the respective Flags of M & US—and when within the waters of the latter shall carry the Flag of US at its mast head indicating its Nationality withat of Mexico on the Foreness [*foremast?*] and to be reverted [*reversed?*] when entering the waters of Mexico— That said steamers shall in conveying the mails be under the protection of both Republics and be entitled to the receprocal privileges of freedom from all Port charges and Tonnage dues: paying only the duties exacted by each country: on the produce or merchandise they transport: and that in the Ports of the Two Respective Republics: a preferred accommodation shall be awarded, for the discharge of Cargo and Passengers: and every facility extended in giving despatch to arrivals and departures.

<sup>2</sup> That Gadsden was the author of this draft article is not to be doubted; but when and how the two papers last mentioned were received at the Department of State is not entirely clear.

The papers in question are bound in D.S., 18 Despatches, Mexico, immediately following despatch No. 16, dated December 16, 1853, and preceding despatch No. 20, dated January 3, 1854, which consists of one paragraph of six lines in Gadsden's handwriting.

The Mexican instruction is a single sheet of paper measuring 9 $\frac{1}{4}$  by 7 $\frac{1}{4}$  inches and written on both sides; the project of treaty is a manuscript of five sheets measuring 12 $\frac{1}{2}$  by 7 $\frac{1}{2}$  inches each. Close to the inner edge of the sheets, 4 $\frac{1}{4}$  and 6 inches from the top, are two small punch holes, through both the instruction



ART. 3. Another motive of difficulty between the two countries proceeds from the claims of certain American citizens in virtue of different decrees and concessions made by the Mexican Government to D. José de Garay and his representatives, with the object of opening an interoceanic communication through the Isthmus of Tehuantepec. The execution of that great work so necessary to the social and commercial interest not only of Mexico and of the U.S., but of the world at large, is seriously obstructed, if not totally stopped by conflicting rights; and the Government of the U.S. having refused to ratify the convention relative to the reasoned concession made to A. G. Sloo and Company, insisting in favor of some of its citizens, holders of the aforesaid concession made to D. José de Garay, and who have made great expences on account of it according to the special fulfilment of the terms of said concession, or in default thereof an ample pecuniary indemnification, the Government of the U.M.S. with the object of settling definitely this unhappy controversy, so long pending, by the present treaty does recognise and revives in all its validity, all the obligations and conditions of said different concessions and contracts entered into by the Mexican Government with D. José de Garay, for the exclusive privilege of a right of way through the Isthmus of Tehuantepec and the other rights and privileges contained in the different concessions and relative titles; and by the present treaty the Mexican Government authorises the assignees and holders of the rights afforded by said concessions, to get possession of them, as if they were accorded at the date of the ratification of this convention; and by this very convention the Mexican Government solemnly compromises itself, accordingly to the original dispositions of the aforesaid concession to sustain and protect the holders of said rights or their assignees in the possession exercise and enjoyment of all the property and privileges afforded by said concession.

In consideration that said concession and contract had in view to secure to the people of both countries important privileges, which can only be realized by the construction, protection and maintenance of a sure and adequate way of transit through the said Isthmus of Tehuantepec, the high contracting parties agree upon by the present treaty, that when some well founded complain should be produced by the assignees of said privilege or in their name against the Government of United Mexican States of having perpetrated or allowed to be perpetrated a violation of said contract and privileges, such a violation or impediment, if by the proper investigation, made by the U.S. should appear to exist, this violation may be considered and declared as a just cause of discordance, according to the sense and meaning of the 21 art. of the treaty of Guadalupe Hidalgo, and it will be settled in accordance with it. This revival and recognition on the part of the Government of the Mexican United States of the aforesaid concessions, rights and privileges, as also this mutual guaranty and acknowledged obligation on the part of the two Governments to afford protection and security to the persons and property of those who may undertake the opening of the intended way of communication, and free transit by the same way, when opened, it is understood are all with the conditions, stipulations and restrictions following. 1\* Said

and the project, suggesting that the two papers may at one time have been tied together with a cord or ribbon. The papers on which the instruction and the project are written have characteristics of size, quality, watermark, etc., that are different from any other sheets to be seen in 18 or 19 Despatches, Mexico.

The two papers are in distinctly different hands. Neither is in the handwriting of Gadsden, and no other specimen of either writing is in 18 or 19 Despatches, Mexico. There are, however, examples of both handwritings among the notes and enclosures from the Mexican Legation in Washington between July 1853 and July 1854 (D.S., 7 Notes from the Mexican Legation). The handwriting of the Mexican instruction appears to be that of Antonio Sierra, then clerk of the Legation, and the handwriting of the project of treaty that of José María González de la Vega, Secretary of Legation. The latter, who arrived at his post shortly before January 3, 1854 (*ibid.*, January 3, 1854), may have brought with him the original instruction and enclosure. Since no note transmitting the papers is of record, and no endorsement of the date of receipt appears on them, it may be presumed that they were handed to Secretary of State Marcy by the Mexican Minister in person and that they were subsequently misfiled.

concessions, rights and privileges shall not be considered obligatories upon the Government of the United Mexican States for their recognition or revival unless the actual holder or holders thereof shall give within sixty days from the date of the ratification of this convention by the Government of the U.S., their consent in writing, so that the same may be deposited in the Department for foreign affairs of Mexico, binding themselves and their assignees of the said grant to pay or cause to pay out of the first proceeds of the canal, rail road or plank road, as the case may be, which shall belong to the Mexican Government, in conformity with the 5<sup>th</sup> art. of the original grant or privilege, the sum of six hundred thousand dollars, and interest thereon at the rate of six per cent per annum from the signing of this convention. This agreement to pay that sum, and the payment thereof which shall be made, shall be for the benefit and reimbursement of those who paid or then may be holders of the receipt of payment of the said sum of six hundred thousand dollars, advanced to the Government of the Mexican United States, in virtue of the stipulations of the grant made to A. G. Sloo and company with respect to the right of way across the Isthmus of Tehuantepec declared and dated. 2<sup>d</sup> If the holder or holders of the grant which is the subject of the present art. should refuse after thirty days notice to enter into a satisfactory agreement with the two contracting Governments for the arraignment of the rates of transportation, or if afterwards they should not comply with this agreement, the Governments which guarantee the protection of the work of opening the communication (which may be by the construction of a plank road, in the first instance if such should be determined by the holder of the grant) should not be commenced within twelve months from the date of the exchange of ratifications of this convention, and if the supposed road should be a plank road, if it should not be completed within three years, and the rail road within a reasonable term, thereafter it may be considered by the Government granting the privilege, sufficient cause to resume or abrogate them. 3<sup>d</sup> In case of any difference arising between the Government of Mexico and the empresarios, present or future, of this work, which may involve the loss of the right to the privilege, the party complaining shall draw up an exposition of its pretensions and grounds, and a similar exposition shall be drawn up by the other party and both shall be submitted to the decision of two arbitrators who shall not have any diplomatic character or commission and who shall reside within the Mexican territory; one of these arbitrators shall be named by the holders of the privilege and the other by the Government of Mexico, and these two arbitrators in case of difference shall name a third with the requisite above prescribed, who shall decide the controversy, and from the decision of these arbitrators there shall be no appeal or recourse whatsoever. Of all other questions which may arise, the Mexican Courts shall take cognizance. 4<sup>d</sup> If the decision of the arbitrators or the umpire, as the case may be, shall involve the loss of the privilege, it shall be sold at public auction, with the conditions which may be imposed by the laws of Mexico in force at the time when the decision may be pronounced upon the subject of the seizure and loss of the privilege, giving notice thereof to the public at least three months before the sale by advertising in two of the principal newspapers at Mexico and Washington. The sale shall be made by a commissioner named by the arbitrators; the proceeds thereof shall be paid to the grantees, who shall have lost the privilege after having deducted the expenses of the judgement and sale. To the Government of Mexico there shall be paid only such duties as may be legal in the City of Mexico, and the commissioner shall give bond for his good conduct.

5<sup>d</sup> The said privilege shall not be sold to any foreign government, corporation or politic body: it shall only be acquired by private individuals, and the purchaser shall remain under the obligation to prosecute the work to its conclusion, and to fulfil the conditions required by the Mexican Government from the grantees, whose rights may be sold and all other conditions which the said Government may legally impose.

6<sup>d</sup> Both contracting Governments bind themselves in conformity with the preceding stipulations to do all that may be in their power to maintain the neutrality of the road and of ten leagues on each side thereof as Mexican territory, not only in time of peace, but in time of war, even when one of the two nations shall be party thereto.

They further agree that in the event of a war at any time between themselves, no vessel of either nation destined to the extreme points of the communication across the Isthmus or to any point of the line of the coast defined by the grant of the 1<sup>st</sup> of March 1842, shall be captured within sixty miles of such extreme points of the road or of the coast, it being understood that there shall be free and secure passage in time of peace for the transportation of all kinds of goods and merchandise, arms or amunitions of war; but in time of war only for merchandise or effects which are not contraband of war, as the latter shall not be permitted to pass. Notwithstanding the neutrality of the communication and of the of the country for ten leagues on each side thereof, Mexico shall preserve the full and complete sovereignty over said communication and territory; strict observance nevertheless shall be had of the conditions of the grant. No passport shall be exacted of persons who may cross the Isthmus; but the Government of Mexico shall exercise jurisdiction over vessels and persons passing the Isthmus in like manner as over those which may belong to its ports and territories. Salutes shall be made according to costume in the ports.

Some few facts regarding Gadsden's draft treaty are disclosed by the protocols (printed below) of the conferences of the Plenipotentiaries. Article 1 contained the boundary clause, which, according to a pencil note in Gadsden's hand on the manuscript of the protocol of December 16, 1853, was line No. 4 of the recorded instructions of October 22; <sup>1</sup> Article 2 of the draft dealt with Article 11 of the Treaty of Guadalupe Hidalgo; but some, at least, of the concluding clauses of Article 2 of the signed treaty and also Article 8 thereof were Mexican proposals; Gadsden's draft included a provision for recognition by Mexico of the Garay Grant, may have included something like Article 4 of the signed treaty, and presumably included Articles 6 and 7 (5 and 6 of the final text); it is probable that Articles 5 and 9 (4 and 7 of the final text) were put forward by Bonilla; and as the demarcation clauses of Article 1 were suggested and agreed to in principle at the conference of December 23, they seem not to have followed whatever may have been written on that subject in Gadsden's project.

While the conferences were in progress Gadsden wrote two notes to Bonilla, one, after the meeting of December 10, regarding his powers, and the other, after that of December 16, offering to purchase Lower California; those notes are not textually available but are mentioned in the protocols, or "Notes of Diplomatic Conferences",<sup>2</sup> which follow (D.S., 18 Despatches, Mexico):

Notes of Diplomatic Conferences for the adjustment of the various issues between U States and Mexico Dec 1853

Dec 10<sup>th</sup> 1853. Genl Gadsden Envoy Extraordinary and Minister Plenipotentiary of the U. States, attended by the Secretary of Legation met in the Office of Foreign Relations, the Commission appointed by H.E. the President of Mexico, composed of HE. Don Manuel Diez de Bonilla Plenipotentiary ad hoc;

<sup>1</sup> The supplemental offer of Gadsden, discussed on December 22, to purchase Lower California, somewhat supports this.

<sup>2</sup> It is strange that Gadsden did not have these papers with him when he came to the United States; he received them while at Washington by mail from Mexico City and transmitted them to Marcy on March 20, 1854, with the suggestion that they be sent to the Senate (see Manning, *op. cit.*, IX, 702); and all of them except that of December 30, 1853, the day of signature, were sent to the Senate on March 21, 1854.

of Don José Salazar Ylarregui, and Genl Mariano Monterde Scientific Commissioners clothed with Full Powers for this Negotiation and of the Secretary Don Lucas de Palacio y Magarola to negotiate and arrange the terms of a Treaty by which all the issues between the two Republics would be reconciled by an extension of Territory to the U States, she thus securing what she was supposed to have attained by the Treaty of Guadalupe, to wit a Boundary susceptible of defence for the mutual protection of the two Countries from Indians and in the right of way for a Military or Rail Road deemed as of equal importance for those ends as is clearly conveyed in the 6<sup>th</sup> Article of the Treaty of Guadalupe. The Parties thus met having presented and examined their respective Powers Mr Bonilla observed that although the Powers presented by Genl Gadsden were in correct form as to their general character, and for the exercise of his Ministerial functions, still he hesitated to receive the same as sufficient for the Negotiations about to be begun, which seemed to require especial Powers; a remark called forth by recollection of the case of Mr Conkling, who tho' invested with equal and full Powers, when the Convention of Sloo was arranged, yet the U States had denied his Authority to enter into such Convention; Mr Bonilla wished to avoid and anticipate any such difficulty. Genl Gadsden replied, that the express motive and object of his Mission, was to arrange a final settlement of questions pending between the two Governments, of which, he offered as further proof, a letter officially addressed to him by the Department of State at Washington, informing him of his appointment as Minister to this Republic for the adjustment of these very negotiations. He furthermore stated, that should he wait to receive especial Powers, the object of his Government would be defeated by the time thus lost. Mr Bonilla answered that these objections would be considered removed by General Gadsden's addressing him an official communication reproducing the remarks above stated. With this understanding, Genl Gadsden presented a Projet of Treaty, and it having been agreed, that as soon as the same should have been translated and examined by the Commissioners on the part of Mexico a day should be named for another meeting, the Conference concluded.

JAMES GADSDEN  
 JOSÉ SALAZAR YLARREGUI

MANUEL DIEZ DE BONILLA  
 J. MARIANO MONTERDE

Dec. 16<sup>th</sup> By appointment the Commissioners named in the report of Conference on the separate parts of the U. States and Mexico met in the Office of Foreign Relations to continue the negotiations of 10<sup>th</sup> inst. H. E. Don Manuel Diez d Bonilla acknowledged the receipt of an official note from Genl Gadsden reproducing his remarks on the sufficiency of his Powers. The discussion was then opened upon <sup>1</sup> the Boundary Line proposed by Genl Gadsden in the first Article of the Projet of Treaty offered by him for the purpose of effecting the objects of his Government. The Parties dissenting widely both as to the direction of the line proposed, and the amount of money to be paid for the land embraced therein, the difference being upon the quantity of land which would be thus ceded; it was finally agreed, that, to obviate any difficulties which could interpose on this head, Genl Monterde and Don José Salazar Ylarregui should meet at the house of Genl Gadsden to discuss these points with the Commissioner of the U. States

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Dec. 22<sup>nd</sup> Commissioners met at the Office of Foreign Relations to continue the negotiations of the 10<sup>th</sup> and 16<sup>th</sup>. The discussion still hung upon the line proposed by Genl Gadsden, who since the meeting of 16<sup>th</sup> had offered by note to Mr Bonilla to purchase *Lower California*. Mr Bonilla in reply denied his Powers to alienate this portion of Mexican Territory; that his instructions obliged him to declare, that only in view of the necessity, which the U States had of land for

<sup>1</sup> Here is a penciled reference mark to the following words written in pencil in the margin in Gadsden's hand: "This Line was the one defined in N<sup>o</sup> 4 of Mr Marcys instruction, deliver<sup>d</sup> thro Mr. Ward".

the proposed road,<sup>1</sup> did Mexico agree (not to defeat a project so beneficial to the U States and the world generally, and to preserve peace and the good understanding which existed) to yield to the propositions of the U States, so far as was compatible with her interests, in view of which, she offered the following line.

That remaining, which was already established by 5<sup>th</sup> Article of the Treaty of Guadalupe between the two Californias, the limits between the two Republics, should continue from the point at which said line cuts the River Colorado, along the middle of deepest channel of said river to a point distant two marine leagues from the most Northern part of the Gulf of California; thence a right line to the intersection of 31° Latitude North with 111° Longitude West of Greenwich; whence another right line until it intersects the Rio Grande or Bravo del Norte in Latitude 31°47'30"—whence said limits shall continue down the middle of deepest channel of said river to where it empties into the Gulf of Mexico, in accordance with what is provided in said Article 5<sup>th</sup> of the Treaty of Guadalupe Hidalgo. Mr Bonilla also added that he made this proposition with the full understanding, that the town of *Paso del Norte* in the Department of Chihuahua, and the entire *Gulf of California*, should continue to be, as they now are under the sovereignty jurisdiction and dominion of the Mexican Republic, which on his part was a sine qua non for the celebration of a Treaty. Each party prolonged the discussion, sustaining their own views, and not coming to any decision, it was determined to defer the question for the meeting fixed for to morrow.

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Dec 23<sup>rd</sup>. By agreement of yesterday the Commissioners on either side met in Conference to prosecute their Negotiations. The discussion was resumed upon that portion of Genl Gadsden's Projct relative to the dividing line between Mexico and the U States. Mr Bonilla being asked by Genl Gadsden, the decision of Mexico on the proposal made by him, replied, that what had been stated thereupon, in the previous Conference, was final and definite; the more so as it was considered, by the proposed line the aims of the U States were satisfied. The Envoy of the U. States observed, that such being their decision, he accepted the line, on condition that the Lake Guzman remained within the Territory to be ceded to U States, by making said line run a proper distance to South of the Lake which in itself might not be of importance; but should the Boundary line happen to traverse it<sup>2</sup> there would not be left room for a road; as it was supposed that the same would of necessity turn to the South of said Lake—otherwise the objects of his Government, which were to reach her more Western Frontier would not be carried out. This having been conceded on the part of Mexico—it was thus settled what was to be the Boundary line between the two Countries. Genl Gadsden then inquired, if Mexico would oppose it, if at any future period it should be considered advantageous to the two Countries to construct a branch of Rail Road to El Paso. Mr Bonilla replied that if the conditions proved acceptable and the sovereignty and exclusive jurisdiction of the country pertaining to Mexico, was not thereby affected, he could discover no objection; that this could not now be a matter of stipulation, but be left for the time of its execution. Mr Bonilla remarked, that it was understood, that all the stipulations of the Treaty of Guadalupe, in favor of Persons as well as of property civil and ecclesiastical were to extend in like manner to the Territory proposed to be ceded; but that he furthermore requested, that all who now inhabit said Territory should be for ten years exempt from taxation. The American Envoy replied that he could not concede this, as contrary to the laws of U States and the rights of each individual State; but that all the stipulations of Treaty of Guadalupe should be extended to Citizens and property. Mr Bonilla proposed to consider the amount to be received by Mexico as compensation for the cession of Territory. Genl Gadsden

<sup>1</sup> Here is a penciled reference mark to the following words written in pencil in the margin in Gadsden's hand: "and for perfecting the Boundary Line between the Two Republics".

<sup>2</sup> The line in question did not traverse Lake Guzman.

stated that he had been instructed by his Government to offer one single amount for all the items of negotiation; wherefore he suggested, that it were better to agree upon the various points at issue and thereafter return to the subject of compensation. On the mode of establishing the line, where it might not coincide with that of 5<sup>th</sup> Article of the Treaty of Guadalupe—The Envoy of U States thought that by the appointment of three Functionaries on either side, those difficulties, which had occurred in the establishment of the line under the Treaty of Guadalupe would be avoided. Mr Bonilla explained, that he considered the creation of three Functionaries of equal faculties and rank would rather produce results contrary to what the American Minister supposed; whereas the existence of a single Commissioner on either side ensured harmony and promptness in the work. The American Envoy suggested that the Commissioners be allowed to name an umpire or third person in the event of any difference between them; this point was given up, as the Mexican Commission observed that no difference could exist in a mere question of Mathematic Science. So it was agreed to nominate one Commissioner on either side for the establishment of the Boundary line; and moreover that the line thus established by consent of Commissioners should be considered a part of the Treaty, without necessity of further approval; and that said Commissioners should meet at Paso del Norte three months after the exchange of ratifications of the Treaty to enter upon their duties. Mr Bonilla observed, during the discussion which next arose upon the 2<sup>nd</sup> Article of the Projet of Treaty offered by Genl Gadsden; that Mexico consented to the abolition and relinquishment of the 11<sup>th</sup> Article of the Treaty of Guadalupe for the sake of harmony and peace which it was asserted over and again had been threatened by the interpretations given to said Article by either side, provided she were amply compensated for the losses which her Government and Citizens had suffered in the past, and for the responsibilities and obligations of which the U. States in the future would be relieved. The Envoy of the U States explained in reply that his Government had as far as was practicable complied with the stipulations of said Article; that she had never understood nor conceded that this Article (11<sup>th</sup>) admitted of that interpretation which Mexico sought to give it; and that never in any case could he recognize the obligation of an indemnity for losses alleged; and still more it was impossible to distinguish between losses arising from incursions of Indians from U States Territory and those caused by Barbarians within the limits of Mexico. A prolonged discussion ensuing upon the same topic, Genl Gadsden remarked that they were merely reproducing arguments that had been canvassed previously; that thus they could arrive at no result and finally proposed as a compromise of the difficulty, the entire relinquishment of the Article by Mexico which would be considered in the amount he was authorized to pay for the arrangement of the various issues between Mexico and U States. Mr Bonilla observed that it was alike to treat of these issues separately as conjointly—that he wished to state that Mr Letcher in 1852 had offered five millions dollars, and Mr Conkling eight millions in June of the present year for the abolition of 11<sup>th</sup> Article; offers which Mexico had refused as insufficient, facts he desired to be borne in mind. The American Envoy stated that he could find no evidence on record of such an offer having been made by Judge Conkling, tho' not in the least casting any doubt upon Señor Bonillas assertion. The Conference having continued some hours it was agreed to renew it on to-morrow

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Dec 24<sup>th</sup>. Genl Gadsden opened the conference to-day with an expression of the desire on the part of his Government for the recognition of the so called Concession to Garay, as the same had passed into the hands of American Citizens. This was but the renewal of the subject contained in the Projet of Treaty presented by him and again urged upon the Commissioners of Mexico by letter. Señor Bonilla replied that the Congress of Mexico had formally declared this concession as null and no longer existing; therefore the present Government could not recognize it as valid; that the transfer, in violation of the spirit and letter of the Grant itself, and without the consent of Mexico, which in fact had not been

sought, was illegal; that no such right as claimed by American Citizens, could, by the terms of the Grant vest in strangers; he repeated therefore that Mexico could not recognize this Concession; or the right of the U. States to intervene in a matter entirely domestic and administrative. The American Plenipotentiary pressing the point, and Mr Bonilla combatting it as earnestly, without a prospect of reconciling their views, the latter gentleman declared that, Mexico was willing to concede to the U States, the country necessary for the purposes of such a road as they might deem proper to construct, as the World and civilization would be greatly benefitted thereby; that in regard of peace and harmony between the two Nations she would for an adequate compensation consent to abolish the 11<sup>th</sup> Article of the Treaty of Guadalupe which had been threatening so serious consequences; that though ready to yield thus much to a neighboring Republic, he never would assent to any thing that in the slightest degree could affect the honor of his country or infringe upon her sovereignty; for these reasons he could not and never would consent to recognize the Garay Concession; with his resolve and views thus explained the only mode of disposing of the matter was to include this Grant within the number of claims proposed to be assumed by the U States—not that it was to be thought that Mexico thus confessed its legality or would admit of any such arrangement, and provided that the holders of the transfer from Garay should previously to any payment for indemnity have relinquished to Mexico the titles and documents they hold in evidence of such claim as they pretend. The American Commissioner again offering three millions of dollars for the right of way as ceded to Garay and now claimed by U States Citizens, the Plenipotentiary on the part of Mexico answered, that however great the offer the resolve of Mexico, on this point was unalterable. The American Commissioner stated that he would not go beyond five millions for the satisfaction of claims of American Citizens against Mexico, and tho' that amount had been claimed by the holders of the Garay claimants, it might be reduced. Mr Bonilla here observed, that should this Concession be examined according to the principles of Justice, of the Law of Nations, and the Laws of Mexico; it had in itself no value, and should the amount expended by said holders be returned them the U States would not pay much; as to the remaining claims, calculating upon the basis of those which had accumulated prior to the Treaty of Guadalupe, those subsequent to that date could not exceed two millions of dollars. Genl Gadsden being asked, what amount he was willing to pay to Mexico for the concessions made to the U States, replied that these involved points at issue, and that the adjustment of these conferred benefits on both as ending the differences between the two Countries; that the U States would, in exonerating Mexico of all demands of U States Citizens become liable in the sum of five millions dollars, and for the other points agreed upon would pay twelve millions—making the amount of the benefits to Mexico seventeen millions. Mr Bonilla thought this offer inadequate and reasons pro and con being still advanced on either side; it was finally decided, that the U. States should pay \$15,000,000 for all other concessions, and \$5000,000 to be devoted for the satisfaction of private claims, both being freed and exempted of all obligations from the date of the signature of the Treaty. It was understood that Mexico in relinquishing the 11<sup>th</sup> Article of the Treaty of Guadalupe did so on condition that the U States, would not on any occasion that they might have to remove the Indians, drive them to the necessity of seeking homes by means of incursions into Mexican Territory. The Treaties<sup>1</sup> of 1831 and 1848 were to continue in force, where not done away with or rendered nugatory by the stipulations of the Treaty now negotiating. Genl Gadsden remarked that the \$15000,000 should be paid in Mexico, but on request of the Plenipotentiary on her part, conceded that it be paid in the U States, and as follows, one-fifth on the exchange of the ratifications of the Treaty, the balance in monthly instalments with interest at the rate of six pr c't per an. The Government of the U States reserving the right to pay the full amount at an earlier date should it be desirable. The exchange of ratifications to be made in Washington within the term of four months from the signing. Mr Bonilla proposed the mutual aid of Naval and Military forces for the suppression of lawless incursions into the respective Territories; a measure, he thought, which would reflect honor on both Countries and carry great moral and political weight to which Genl Gadsden assented.

<sup>1</sup> Documents 70 and 129.

It was then agreed that Mr Bonilla was to submit the draft of a Treaty presenting the points determined on—with which terminated the Conference.

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Dec 30<sup>th</sup> As previously agreed the Commissioners met at the Legation of the U. States to continue the Negotiation adjourned on the 24<sup>th</sup>. On the part of the U. States, James Gadsden Envoy Extraordinary and Minister Plenipotentiary, accompanied by the Secretary of Legation, John S. Cripps; on that of Mexico, His Excellency, Don Manuel Diez de Bonilla, Minister of Foreign Relations, Plenipotentiary ad hoc, Don José Salazar Ylarregui and General Mariano Monterde, scientific Commissioners, and the Secretary Don Lucas de Palacio y Magarola. The draft of a Treaty mentioned in the report of the conference of 24<sup>th</sup> having been carefully considered and the proper modifications having been proposed on either side and adopted; it was signed both in Spanish and English, in Duplicate; it was furthermore decided and mutually promised, in consideration of facts, mentioned by the Plenipotentiary that the terms of this Treaty be held strictly secret until such time as the same shall be ratified by the U States. The Commissioners then separated after mutual congratulations upon the result of their many conferences, so often threatened by the intrigues of speculators and persons interested in preventing a happy understanding between the two Countries—

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Gadsden's lack of a full power had been waived (see the protocol of December 10); this note to him from Bonilla, dated December 20, 1853 (not mentioned by Gadsden in his despatches), seems to have included an oblique reference to the fact, as well as notification of requirement of more formal procedure in the future (D.S., file 026 Treaties/2150, translation of enclosure to despatch No. 7316 from Mexico City, dated September 3, 1938):

His Most Serene Highness the President of the Republic being desirous that all acts of his administration shall have the character of openness and frankness which should distinguish an enlightened Government, particularly in its dealings with other powers, he has been pleased to resolve that hereafter no convention or agreement of a diplomatic character shall be entered into, except when a treaty is signed with all its requisites in such a manner that it shall have the force and validity which are inherent in this kind of documents.

The undersigned, upon having the honor to communicate to His Excellency this decision of the Chief Executive, renews to him the assurances of his distinguished consideration.

The treaty was taken to the United States by Gadsden, who left Mexico City with Ward on January 4, 1854; this letter to Marcy from Gadsden of January 2 is marked as received on January 20 (46 Marcy Papers, 43215):

I have just concluded a Treaty: The Boundary somewhat tortuous, commencing at El Passo. say 4 miles above & running so as to enclose Lake Gusman—to the intersection of 111 Long' with 31 Latitude & thence to 2 leagues or 6 miles above the head of the Gulf of California— Price 15 millions including relinquishment of 11 Article—& 5 millions to extinguish American claims: embracing an indemnity for Tehuantepec Right of Way— I am overwhelmed in preparing copies of documents &c so as to start with the Treaty by Diligence on the 4<sup>th</sup> But



as there has been some very extraordinary movements by Hargous: Ward & Co. to defect the Treaty (more anon) there is a possibility that I may be blocked out of a seat in Dilligence— The Game has been played— But I think I am secure— Least accident with design should bear sway. I write this precautionary letter— That you may know the reasons how I do not report myself & the Document: in advance of all others— The Treaty is safe—and the only & principal obstacles to earlier success was Wards arrival and his Combinations with the Hargous' and Escandon— I have exposed a conspiracy— You will be shocked at the recital— Its only redeeming virtue is that it defeated itself— But more anon

[Postscript.] This is said to be the only Treaty for years which has ever been concluded without "Brokerage" a Mexican signification, where the Broker greezes the Officials: & retains all the Tallow— W——, instincts were too strong not to resist—

The first news of the treaty received at Washington was by a telegram from Gadsden to Marcy sent at New Orleans on January 12 (received on Sunday, January 15), reading: "All issues with Mexico reconciled on conditions honorable and just to both countries. Particulars by mail" (47 *ibid.*, 43299); and on the same day Gadsden wrote this to Marcy (*ibid.*, 43283):

I have just landed from the Texas with a Treaty, which reconciles all the issues with the Mexican Government and on terms *equal & honorable* to both Countries.

I feel every assurance that its provisions will meet with the ready approbation of the President and Senate— I assure you they are far more favourable than I had any reasonable hopes to accomplish 10 days since— The obligations under the 11 Article are expunged— A new & more extended boundary, capable of strong defence secured: and all Claims of US Citizens including an indemnity to the American Assignees of Garay Grant for 20 millions 15 paid Mexico & 5 reserved for indemnities— The Line commences at about 3 miles north of El Passo in Latitude 31°47'30 & runs thence to where the 111 Longitude intersects the 31° of Latitude & from thence to 2 leagues above the head of the California Bay on the Colorado & by the main Channel of that River to where the Boundary between the Californias intersects the same— I will personally explain many unexpected difficulties thrown in the way of our negotiations: and which certainly delayed a consummation: if they did not operate unfavourably on the issue— The Territory by estimate will contain between 35 & 40 millions of acres: and its Mineral resources far transcend the first valuations— It embraces the Aresonia Ridge: which develops Iron & Copper, as well silver & all along the San Pedro are developments of silver and some indications of Quick silver— I write in haste for mail— I will confide the Treaty at Branchville to Mr Ward, and pass by Charleston to see my family enroute for Washington— I wish the Pres<sup>t</sup> to examine the Treaty on its own merits & he will thus have time before I reach the City

Gadsden arrived at Charleston on January 17 and left there for Washington on January 23 (Charleston Courier, January 21, 1854, p. 2; January 25, 1854, p. 1). It was accordingly Ward who delivered the treaty to President Pierce on January 19 (see New York Herald, January 20, 1854, p. 1).

For Santa Anna's accounts of the negotiations (written in 1853 and in his later memoirs), see Rippy, 144-47, and that author's translations thereof in Southwestern Historical Quarterly, XXIV, 235-42.

As has been told above in detail under "Senate Proceedings and

Amendments", the treaty signed by Gadsden was greatly changed in all its most essential features before it went into force. The territorial cession negotiated by Gadsden was lessened; for the provisions for the reciprocal release of claims and payment of the American claims by the United States to the extent of \$5,000,000 was substituted a clause which had the effect of extinguishing all claims against the United States under Article 11 of the Treaty of Guadalupe Hidalgo, leaving all American claims against Mexico intact; to the abrogation of that article was added abrogation of Article 33 of the treaty of April 5, 1831 (Document 70); the money consideration to Mexico was reduced from \$15,000,000 to \$10,000,000, with altered terms of payment; and an article (8) in support of the Sloo Grant was written. The major engagements of the Gadsden Treaty were framed in the Senate of the United States (in large part in disregard of or contrary to the recommendations and wishes of President Pierce), and not at Mexico City. Of the work of the Plenipotentiaries there were left intact (except for a few trifles of no import) the demarcation and following clauses of Article 1, the articles regarding the ceded territory (4, 5, and 6 of the final text), and the reaffirmation of Articles 21 and 22 of the Treaty of Guadalupe Hidalgo (Article 7), with the preamble and formal closing (Article 9 and final clauses).

On December 22, 1853, eight days earlier than the treaty, Marcy wrote another instruction, responding to Gadsden's private despatch of November 20 (quoted above); this instruction had no influence on the negotiation, as it did not reach Mexico City until after the signature of the treaty and the departure of Gadsden for the United States; it is printed here to show the views and policy of the administration at the time (D.S., 16 Instructions, Mexico, 436-40):

In several of your despatches you have expressed a desire to receive further instruction in regard to a treaty to be made with Mexico for the adjustment of the difficulties and matters in dispute between her and the United States. In the month of October, Mr. C. L. Ward left this city for the city of Mexico with verbal instructions to confer with you in regard to the matters upon which you wish the views of your government. You were desired to consider him as the authorized agent of this government for that purpose.<sup>1</sup>

The views of this government, which he was instructed to make known to you, related to the adjustment of the boundary question, changes in the line, and all the claims of Mexico or its Citizens upon the United States arising under the Treaty of Guadalupe Hidalgo, on the one hand, and on the other, all the claims of the United States and their Citizens upon Mexico arising under the same treaty. The respective sums which you were authorized to offer for the suggested changes in the boundary, were to cover these claims of Mexico and her citizens, those of the United States and their Citizens under the Treaty, and only those under the Treaty were to be released. There were good reasons for not clogging the negotiation with other claims. The principal one was that it would be likely to embarrass and delay an adjustment. This government would, as a necessary consequence, assume the payment of the claims from which it might by any treaty exonerate Mexico, and in that case it would be proper to deduct from the sum to be allowed for a new and better boundary an amount approximating to that which these claimants might reasonably expect to receive from the United States. Some of these claims are of a very indefinite character;

<sup>1</sup> If Ward was the authorized agent of the Government to "confer" with Gadsden, his powers were more than those of a messenger charged with nothing but to communicate the wording of specific directions.

for instance that of the proprietors of the Garay grant. Mexico denying, as she does, all right on their part to receive any compensation whatever, would be unwilling to deduct any considerable sum from a reasonable consideration to be paid for any new territory she might cede for the purpose of a better boundary. The release of that claim by the United States would subject this Government to a demand for a very large sum by the assignees of that grant. Without some understanding with these claimants as to what would be accepted by them, this government is unwilling to assume the payment of it when it is certain no equivalent allowance therefor could be obtained from Mexico; and if any thing like an equivalent allowance was insisted on, it would defeat the negotiation.

The other claims, independent of those arising under the Treaty of the 2<sup>d</sup> day of February 1848, are not sufficiently known to make it a matter of prudence for this government to assume them, or to hazard the success of the negotiation by reserving a sum to cover the liability which would be incurred by the general assumption of them. For these reasons, it was thought best that your negotiation in regard to a new boundary should not be embarrassed by the release or assumption of other claims than those arising under the several articles of the Treaty referred to.

If I rightly apprehend your private letter <sup>1</sup> of the 20th. ultimo, Mr. Ward has urged you to include into the negotiations for adjusting the boundary question, the settlement of that much vexed matter,—the Garay grant. For the reasons I have above stated, he was directed to inform you, not to embarrass your negotiation with it.<sup>2</sup> What he was to communicate to you was reduced to writing and placed in his hands, but he was not to take that writing with him into Mexico. As the negotiation now stands, I do not deem it improper or unsafe to extract from that writing what it contains in relation to the claims to be embraced in any Treaty you might be able to make:

There may, also, be a reciprocal article in the new Treaty releasing Mexico from all damages and injuries which the United States may claim for themselves or on account of any of their Citizens arising under any articles of the Treaty of Guadalupe Hidalgo.

In relation to the last of the several lines indicated, the only one which, as you state in your last despatch, you have any hopes of obtaining,<sup>3</sup> Mr Ward was directed to communicate to you as follows:

Though there has been but a partial reconaissance there is but little doubt here entertained that a Line on the 32<sup>a</sup> parallel of latitude would give the United States a good route for a Rail Road from the Rio Grande to the Gulf, but neither a Line from Frontera or on the 32<sup>d</sup> parallel would be a good boundary, and if no better one can be obtained, it is important that with it there should be a release of the United States from the stipulations of the Eleventh article of the existing Treaty of boundaries. For a release of all claims for damages and losses under that Treaty, and a release from the Eleventh Article, together with a Line from Frontera or on the 32<sup>d</sup> parallel of Latitude the United States Minister is authorized to pay up to fifteen millions of dollars.

The sum mentioned for each line is the maximum which the United States Minister is authorized to offer. He will get any one of the Lines indicated for a less sum if it be practicable. He is vested with discretionary power to modify to some extent any one of these lines, keeping in view and obtaining the end which he is aware, the United States have for negotiating a new line.

<sup>1</sup> Quoted above.

<sup>2</sup> In the recorded instructions of October 22, 1853, there is language limiting the negotiation to two subjects, the boundary and reciprocal claims under the Treaty of Guadalupe Hidalgo; but the Garay Grant is not *eo nomine* excluded.

<sup>3</sup> There is a misapprehension here, due to the vague language used by Gadsden in his private despatch of November 20, 1853 (quoted above), in which he wrote of the "*lesser session*" as the only one he felt "sanguine about"; by this he meant Pierce's line No. 4 and not, as Marcy thought, the final alternative line from the Rio Grande westward along either 32° or 31°48' north latitude.

One of the modifications contemplated is the deflection of the line from the 111<sup>th</sup> Meridian of Longitude so as to pass by the shortest line to the mouth of the Gila. This would equally with the proposed line secure the object of an uninhabited boundary but would give an awkward contour and deprive us of a port on the Gulf of California. Any considerable change will involve the propriety of a change in the amount of the consideration to be given. This is confided to his discretion influenced as it will be by the offers before specified.

Your views of the course of the President of the United States in relation to what is called the Slocum grant are correct. He has not determined to submit the Convention made by your immediate predecessor, Mr. Conkling, to the Senate, and I do not believe he will do so.

You intimate in your communications that possibly there may be money to a considerable amount, which the President might use in order to facilitate a difficult negotiation, but it is not so. The secret service fund at the control of the President is small. The amount annually appropriated does not exceed \$40,000, and the appropriation for the present fiscal year has been in part expended. Should the President make application for an immediate increase of it to a large amount, it would be necessary to explain to Congress the particular use proposed to be made of it. The subject would of necessity go before both Houses and undergo much debate. It would be impossible to preserve secrecy as to the object to which it was intended to apply it. I cannot, therefore, promise that any thing can be done in this way to facilitate your present negotiation.

The last instruction written to Gadsden about the negotiation was that of January 6, 1854, a week after the signing of the treaty but before news of it had reached the Department of State. Therein Marcy acknowledged the receipt of Gadsden's despatch No. 16, of the previous December 16 (quoted above), and proceeded thus (D.S., 16 Instructions, Mexico, 442-45; the portions of the instruction following this excerpt have been quoted above):

I much regret the very many embarrassments which have been thrown in the way of the negotiations you have in hand. The statements in relation to the views of this government as to terms on which it is willing to treat with Mexico, supposed to have been sent out by the Mexican Minister here, are so very erroneous and so well calculated to exert an adverse influence upon your negotiations that I deemed it my duty to attempt to correct them, and as the best means of doing so, I sought an interview with General Almonte. I expressed to him my regret that such erroneous statements should have reached Mexico in any way, and still greater should be my regret if his government at all heeded them; for if it did, I was quite certain the attempt to settle the existing difficulties between the two countries would fail. I assured him, that, though it was desirable to get a feasible route for a Rail Road in the vicinity of the Gila river, any idea that the United States would give an enormous sum for a tract of barren country in that region ought at once to be abandoned by his government, as also the idea that a cession of such a tract was not to be accompanied by an adjustment of claims for damages arising under the Treaty of Guadalupe Hidalgo. I also remarked to him that his government ought not to form any extravagant notions as to the amount of those claims on the part of Mexico, for he was well aware of the different constructions given to the 11th. Article of that Treaty. Upon that subject the government of the United States had spoken for itself, and Mexico ought not to permit herself to be misled by the speculative views of persons who had no connection with the management of public affairs. I assured him that though the Tehuantepec grants might come incidentally into view, you would not suffer the negotiation to be embarrassed by them. General Almonte seemed to think that the negotiation has been prejudiced by the very large tracts of Territory which this government had asked for. To this, I replied that I could not conceive how any injurious effect could result from that

cause. I told him the United States were at liberty to ask, and Mexico had a right to refuse. Beyond a feasible route for a Rail Road it was not territory that was wanted, but a safe and easily defended boundary—and in having such a boundary Mexico was much more concerned than the United States. In the discussion of these matters with General Almonte I endeavored to bring down the extravagant expectations which have I fear been raised in Mexico by indirect and unfair means, and I hope that to some extent I have succeeded.

#### DEMARICATION OF THE BOUNDARY

Regarding the execution of the demarcation clauses of the Treaty of Guadalupe Hidalgo (Document 129), see volume 5, pages 414-21, and the authorities there cited.

The Emory report on the boundary, dated July 29, 1856, gives the history of the proceedings had under both this treaty and the Treaty of Guadalupe Hidalgo (Senate Executive Document No. 108, 34th Congress, 1st session, serial 832; hereinafter cited as "Emory Report"; printed also as House Executive Document No. 135, 34th Congress, 1st session, serial 861).

The provisions for boundary demarcation set forth in Article 1 of the Gadsden Treaty required the appointment of one Commissioner by each Government. The Commissioner of the United States was William Hemsley Emory, Major, 1st Cavalry, U.S.A., who was appointed on August 4, 1854 (for his commission, see Emory Report, xvi). The Commissioner for Mexico was José Salazar Ilarregui, notice of whose appointment was given to Secretary of State Marcy by the Mexican Minister at Washington under date of October 14, 1854 (D.S., 7 Notes from the Mexican Legation). The journal of the Commission is printed in Emory Report, 26-38. For the organization of the American side of the Commission, see Emory Report, 24.

The Commission met first informally at Paso del Norte (now Ciudad Juárez) on December 2, and formally on December 4, 1854. The initial point on the Rio Grande "where the boundary . . . leaves the river to run westward" at latitude  $31^{\circ}47'$ , was marked on the ground on January 10, 1855, and the foundation of the monument, placed "as near the river as the nature of the ground will admit", was laid with ceremony on January 31, 1855.

At the last meeting of the Commission in the field, on August 16, 1855, the following articles of agreement were recorded (*ibid.*, 32-33):

1. Mr. Emory, the American commissioner, agrees to adopt, unconditionally, all the monuments, mounds, lines, and points now established by Mr. Salazar, the Mexican commissioner, and by Don Francisco Jimenez, first engineer of the Mexican commission.

2. Mr. Salazar, the Mexican commissioner, agrees to adopt unconditionally all the monuments, mounds, lines, and points now established by Mr. Emory, the American commissioner, and by his assistants, reserving the right to substitute a monument for a mound at the intersection of the meridian with the parallel of  $31^{\circ}47'$ , and to erect a mound or monument on the same parallel to the south of the Potrillo, and at any point along the line already established where it may appear to him necessary, and where heretofore it was impracticable, owing to the absence of water.

3. The two commissioners agree to declare, and do declare, the line surveyed, marked, and established as far as the 111th meridian of longitude, as the true line of boundary between the two republics, and they agree also to declare, and do declare, the line established from the 111th to its intersection with the Colorado, the true line between the two republics. They further agree to declare the line fully surveyed, marked, and established through its whole extent as soon as notification is received from Señor Jimenez and Licutenant Michler that the topography of the last named line is completed between the 111th meridian and the Colorado river, and it shall be the duty of each to inform the other when such notification is received, and also to report to their respective governments that all the field-work of the boundary is concluded.

4. To carry out the stipulations in the first article of the treaty of December 30th, 1853, requiring the commissioners to make proper plans of their operations. It is agreed that the two commissioners, with their assistants, shall meet in the city of Washington on the first day of April, 1856.

On October 15, 1855, the Mexican Commissioner wrote from Janos (in northwestern Chihuahua) to the American Commissioner as follows (*ibid.*, 35, translation; and for a translation of the communication of the same date from Salazar to the Mexican Minister of Foreign Affairs, see *ibid.*, 35-36):

Lieut. Michler has just delivered to me, personally, an official note, whereby I am informed that the survey of the line between the meridian of 111° and the Colorado has been completed.

This I have communicated to my government; and I advise you of the same, hoping that you will be pleased to communicate it to that of the United States, conformably to the resolution of article 3d of the convention held on the 16th of August of the present year.

On December 18 Major Emory thus reported to the Secretary of the Interior, Robert McClelland (*ibid.*, 35):

I communicated to you, a few days ago, a telegraphic despatch reporting the completion of the survey of the boundary.

I have now the honor to inform you that I have received official information of the arrival of the last surveying party of the commission in San Antonio, and the completion of the work assigned to it.

I have also to communicate to you the copy of a letter from Señor Salazar, the Mexican commissioner, informing me of the complete fulfilment of the 3d article of the convention with him, signed August 16.

The field-work of the boundary commission is therefore at an end.

**THE INITIAL POINT ON THE RIO GRANDE, INTENDED TO BE IN 31°47' NORTH  
LATITUDE<sup>1</sup>**

The initial point of the land boundary is located in the middle of the deepest channel of the Rio Grande where it is crossed by the parallel of 31°47'. This is not a fixed point, but is subject to continual change with the meandering of the river.

Monument No. 1, the initial monument on the western land boundary, was constructed on the west bank of the Rio Grande in 1855 during the original survey of the boundary line and has remained unchanged from its original position ever since. It was repaired and a shell of concrete added in 1892. Although the position of Monument

<sup>1</sup> These paragraphs were written by the Geographer of the Department of State, Mr. Samuel Whittemore Boggs.

No. 1 has never changed, the computed latitude and longitude of the monument (that is, its relative distance from the equator and from the meridian passing through Greenwich) have changed as new and doubtless more accurate surveys have been made. The position of the monument, according to different reports, is given as follows:

Description	Latitude (north)	Longitude (west)
Survey by the Boundary Commission in 1855.	31°47'00"-----	106°31'23".50.
Resurvey in 1892-----	31°47'01".35 (mean geodetic latitude).	106°31'39".03.
Redetermination by the U.S. Coast and Geodetic Survey, computed on the North American datum of 1927.	31°47'01".612-----	106°31'45".109.

The initial monument is thus determined to be 1.612 seconds of latitude, or approximately 162.87 feet, farther north than was intended by the Gadsden Treaty.

The distance along the boundary line due west from the initial point in the Rio Grande to Monument No. 1 is not constant, but varies, as stated above, with the meandering of the river. At various times the distance has been recorded as being 71.04 meters (in 1855, original boundary survey), 172.6 meters (in 1892, Barlow survey), 147.34 meters (in 1930, Gannett survey), and 142.04 meters (in 1939, Rio Grande Canalization Project surveys).

MONUMENT NO. 127 (OLD EMORY MONUMENT NO. 27), INTENDED TO BE IN NORTH LATITUDE 31°20' AND WEST LONGITUDE 111°<sup>1</sup>

The position of one of the turning points on the boundary, which is less than ten miles west of the city of Nogales (in Arizona and Sonora), was intended to be, by definition of the Gadsden Treaty, in 31°20' north latitude, 111° west longitude. This is the western terminus of that portion of the boundary on the parallel of 31°20' north latitude; from that point the line follows an azimuth or great-circle course to the north of west, to a point in the Colorado River.

By the original boundary survey in 1855, however, the monument marking this turning point (Monument No. 27 of the Emory report) was located about four miles too far west and a few feet too far south. The latitude and longitude of this turning point (now marked by Monument No. 127), computed on the North American geodetic datum of 1927, are as follows: latitude 31°19'56".07 north; longitude 111°04'27".60 west of Greenwich (Garner, Triangulation in Arizona (1927 Datum), pt. 1, p. 32).

According to this determination, the turning point is approximately 4.396 miles west and 397.099 feet south of the point intended by the Gadsden Treaty.

<sup>1</sup> These paragraphs were written by the Geographer of the Department of State, Mr. Samuel Whittemore Boggs.

## THE BOUNDARY MAPS

By Mrs. Sophia A. Saucerman, Assistant Geographer, Department of State

## THE MAKING OF THE MAPS

Preparation of the originals of the boundary maps from plans, sketches, and field notes of the boundary survey, was carried out at Washington.

During a period when Major Emory was temporarily in charge of the United States section of the Boundary Commission under the Treaty of Guadalupe Hidalgo, he wrote to Secretary of the Interior Thomas Ewing from San Diego on March 1, 1850 (Senate Executive Document No. 34, pt. 2, 31st Congress, 1st session, serial 558, p. 9):

This important matter of the record, which when printed, and the copies multiplied, forms the imperishable evidence of the boundary, cannot be done in this country; neither the necessary papers nor books of reference can be had here. It is a business never attempted in the field, nor away from the societies of the learned: it must be done at the proper places and by the persons who made the observations on which the results depend, or the results must be lost to the country.

Secretary Ewing on April 29, 1850, directed Major Emory to press the survey of the boundary from the Pacific Ocean to the mouth of the Gila River and to remain in the field until he had gathered "all the elements necessary for the calculations, and a due plotting of the same"; then to proceed to Washington for the purpose of making the calculations and maps (*ibid.*, 19-20).

Major Emory returned to Washington in the fall of 1850 to project the maps of the California line (D.S., United States-Mexico Boundary, envelope 6, Emory Correspondence, hereinafter cited as "Emory Correspondence"; letter dated at Washington July 15, 1856).

The surveying party left to run the boundary returned to Washington, upon completion of its work, in September 1851 (Emory Report, 10). Brevet Captain Edmund L. F. Hardcastle, who had been in charge of this party, reported on June 10, 1852, to Secretary of the Interior Alexander H. H. Stuart (D.S., United States-Mexico Boundary, envelope 11, Miscellaneous Correspondence, hereinafter cited as "Miscellaneous Correspondence"):

The maps and notes, a catalogue of which is herewith enclosed, have been securely boxed and are now ready to be delivered to the Department. The notes, being mostly in duplicate, have been placed in separate boxes. . . . They are all addressed to Major W. H. Emory, who has had charge of this portion of the work.

The "catalogue" consists of two folded sheets of ruled blue paper on which are listed in writing the materials contained in three boxes. Some of the "Maps & Sketches" listed therein are "Plans A & B—Gray's Map of Mex<sup>n</sup> B<sup>y</sup> from Pacific to Junction of Gila and Colorado—(signed by Commiss<sup>rs</sup>)" and "Southern part of Port of San Diego &c'—(Original by Gray)". Itemized are a "First or 'Rough' Set" and a "Finished Set" of map sheets that cover the boundary from the Pacific eastwardly; a "Junction Sheet" covering the boundary



from the mouth of the Gila westwardly; and a few sheets which singly cover the whole section of the boundary. Various stages of completion are indicated for the several sheets, but only the sheet covering the initial point near the Pacific and the junction sheet are indicated as "finished".

Progress on the maps under both treaties was reported to Secretary of the Interior Robert McClelland by Captain George Thom, who was in charge of the work at Washington, in a letter dated October 27, 1854, reading in part (Miscellaneous Correspondence):

The Maps of the Rio Bravo continue to be executed in the same style of art as when last inspected by you. . . .

There still remains to be drawn about twenty sheets of that portion of the boundary (including the Islands and Soundings in their vicinity): also two large general index-Maps of the whole boundary from the Gulf of Mexico to the Pacific . . . together with several Maps of the country near the Gila. . . .

I have placed in the hands of an engraver one of the boundary maps.

On August 24, 1855, Captain Thom reported further to Secretary McClelland (*ibid.*):

All the engraving, and office work begun in 1853, is now nearly completed so far as relates to the survey of the boundary under the treaty of Guadalupe Hidalgo. It will be quite completed before the close of this year. The office work of the survey of the boundary under the treaty of Decr 30<sup>th</sup> 1853 (now being completed), is in a state of preparation, only awaiting the astronomical & surveying notes, to be brought to an early completion.

The arrival at Washington on June 21, 1856, "of the gentlemen who compose the Mexican Boundary Commission, for the purpose of closing their labors in conjunction with the Commission appointed on the part of the Government of the United States of America", was duly notified to Secretary of State Marcy by the Mexican Minister at Washington, General Robles, the names of the party being given as follows (D.S., 8 Notes from the Mexican Legation, June 27, 1856, translation; see also the answering note of July 2, 1856, wherein Marcy wrote that he acquainted "General Robles that he has communicated a copy of his note to the Secretary of the Interior, under whose more immediate direction will be completed the final labors of the Boundary Commission"; D.S., 7 Notes to the Mexican Legation, 77-78):

Commissioner: Señor Don José Salazar Ilarregui.  
 1st Engineer: Captain Don Francisco Jimenez.  
 2d Engineers: Captain Don Agustin Diaz.  
                   Captain Don Luis Diaz.  
                   Captain Don Manuel Aleman.  
 Assistants: Captain Don Ignacio Molina.  
                   Captain Don Julio Pinal.  
                   Engineer Don A. Espinosa y Cervantes.

The final meetings of the Commission were held on June 24 and 25, 1856 (Emory Report, 37-38). The record of the latter of these follows:

Commission met at 9<sup>h</sup> 30<sup>m</sup> a.m., and the following preamble and resolution were adopted:

Whereas Señor Salazar has stated it to be within his personal knowledge that some of the monuments erected by Mr. Emory were destroyed and others mutilated by the Indians, in the short space of time elapsing between the construction of these monuments and the final inspection of them by Mr. Salazar; and whereas it appears, from the maps and views which have been drawn, that the topographical features of the country, based upon astronomical determinations, are represented in sufficient detail to enable any intelligent person to identify the line at any required point; therefore, be it

*Resolved*, and agreed upon in joint commission, that these maps and views, duplicate copies of which will be made—one to be deposited with the United States, the other with the Mexican government—shall be the evidence of the location of the true line, and shall be the record to which all disputes between the inhabitants on either side of the line, as to the location of that line, shall be referred; and it is further agreed that the line shown by these maps and views shall be regarded as the true line, from which there shall be no appeal or departure.

Mr. Salazar proposed, with the view of carrying out the labors to the end in the soonest time, that the detailed maps be made, one copy by each commission, on a scale of  $\frac{1}{40000}$ , and a general map of the whole boundary on a scale of  $\frac{1}{100000}$ . That at the end, when the total work was done, the maps should be signed, to be given to the respective governments, and the two commissions should exchange the topographical and astronomical data by which each commission has arrived at its results in the field.

Mr. Emory stated that he had constructed the maps of the country from San Diego to the Colorado on the scale of  $\frac{1}{40000}$ ; the projections for the maps of all the other portion were on a scale of  $\frac{1}{60000}$ . It would be exceedingly inconvenient, if not impracticable, to reconstruct them; he therefore proposed that Mr. Salazar's proposition should be so far modified as to leave the California section of the work to stand as it is, on a scale of  $\frac{1}{60000}$ . This was assented to by Mr. Salazar, and it was agreed as follows, viz:

That the detailed maps of the California section of the work shall be received on a scale of  $\frac{1}{60000}$ , the detailed maps for all the other portion of the boundary shall be completed on a scale of  $\frac{1}{60000}$ , and that a general map of the boundary shall be constructed on a scale of  $\frac{1}{100000}$ , which maps, when completed, shall form the evidence of the true line referred to in the agreement made this day.

Major Emory on September 29, 1857, wrote to Secretary of the Interior Jacob Thompson in part as follows (Emory Correspondence):

I have the honor to send herewith four Portfolios of Maps numbered from 1 to 54, representing the Boundary between the U.S. & Mexico from the Gulf of Mexico to the Pacific Ocean.

These Maps are accompanied by one General Map on a scale of one six million and four Sectional [Index] Maps on a scale of one six hundred thousand. The General Map and Sectional Maps Nos 3 & 4 are in the hands of the engraver, but will be replaced in the folios when engraved.

Referring to the fifty-four main maps (the maps placed in the four portfolios), Major Emory wrote (Emory Report, xiv): "They are too voluminous to admit of publication, and it is believed all the information which they contain is condensed in the five maps which are published." The fifty-four maps, as a set, have never been reproduced (see Moore, Digest, I, 754-55).

The labors of the Boundary Commission under the Gadsden Treaty ended on September 30, 1857; on the next day Major Emory wrote to Secretary Thompson (Emory Correspondence):

The joint Commission for running and marking the Mexican Boundary under the Treaty of Feb. 30<sup>th</sup> 1853 concluded their work yesterday and adjourned. I hand herewith the official journal kept by Señor Salazar and myself, also the

journals two in number kept by my predecessors who were engaged on the Boundary under the Treaty of Guadalupe Hidalgo.

I also hand an official copy of views along the line, which are to accompany the Maps deposited with the Department of the Interior September 28<sup>th</sup>.

The publication of the Maps and Report of the Boundary Commission ordered by Congress has entailed upon me the necessity of retaining for a day or two some of the employes; I will at the earliest moment make you a full statement of its present condition, and at the same time make a proposition in regard to it, by which I may be permitted to join my Regiment.

#### THE ORIGINAL MAPS

The American originals of the boundary maps authenticated pursuant to the provisions of the Treaty of Guadalupe Hidalgo and the Gadsden Treaty consist of the following: fifty-four maps, or map sheets, covering the entire boundary from the Gulf of Mexico to the Pacific Ocean; four index maps, or map sheets, showing the positions of the fifty-four maps; and five map sheets which repeat, on larger scale and in greater detail than the main maps, those sections of the Rio Grande in which the location of the boundary channel determined the allocation of islands to the United States or to Mexico. All the maps mentioned are in the Division of Maps and Charts of The National Archives.

The fifty-four main maps are numbered consecutively from east to west. Each map is numbered in the upper right corner of the sheet, just above the border of the map, in this fashion: "N<sup>o</sup> 1." The index maps and the detailed maps of the Rio Grande sections also are numbered consecutively from east to west. Their numbers are indicated in the titles, except in the fifth of the detailed maps, which is not numbered.

The scale on each map is indicated both in terms of the natural scale and by means of a bar marked in linear units. Of the fifty-four main maps, maps 1 to 45, which cover the boundary from the Gulf of Mexico to the Colorado River, are on a scale of 1:60,000 (1 inch equals 0.947 statute mile), while maps 46 to 54, covering the boundary from the Colorado River to the Pacific, are on a scale of 1:30,000 (1 inch equals 0.47 statute mile). The detailed maps of the Rio Grande sections are on a scale of 1:6,000 (1 inch equals 500 feet). The index maps are on a scale of 1:600,000 (1 inch equals 9.47 statute miles).

Measured between the innermost border lines, the dimensions of the maps are as follows: The smallest is 20½ inches high by 31 inches wide; the largest is 24½ inches high by 37½ inches wide; the others for the most part are about 22½ inches high by 35½ inches wide. The map sheets, over-all measurements, range in size from 24¾ inches high by 36¾ inches wide to 26½ inches high by 39½ inches wide.

All the fifty-four maps except map 29 have been recently crepe-lined and mounted on cloth, with the cloth folded forward on the map face to form a narrow binding. Map 29 retains an old linen mounting, and pieces of old blue-silk-ribbon binding are still attached to it.

The fifty-four maps which together cover the entire boundary

except map 29; the five detailed maps of the Rio Grande sections; and the four index maps, except index map 1, are signed by William Hemsley Emory, United States Commissioner, and José Salazar Ylarregui, Mexican Commissioner, and all the signed maps except maps 30, 31, and 33 have over the signatures, in handwriting: "Examined, compared & agreed to" or its equivalent in Spanish: "Examinado y comparado con acuerdo". Over the signatures on map 30 there is written: "Examined & compared with map of mex Bd. Com: and agreed to", and on maps 31 and 33, the Spanish equivalent: "Examinado y comparado con el mapa de la Comision mexicana y con acuerdo". The signatures are "W. H. Emory" and "José Salazar Ylarregui", with slight variations in punctuation.

Maps 1-21, 23-26, 53-54, and the detailed maps of the Rio Grande sections, except the fifth map, are subscribed: "Verified, Geo. Thom Capt. Topl Engr". Index map 2 is subscribed: "Verified by N. Michler Lt. Topl Engrs. U.S.A."; the same words, but in draftsman's lettering, appear on index map 4. The remaining maps are not verified.

The individual maps vary in style of lettering, abbreviations, capitalization, and punctuation. In this description the style of the originals is followed in quotations from individual maps; when generalizations are made concerning titles common to several maps, the style most typical is followed.

The main title on each of the fifty-four maps is: "BOUNDARY BETWEEN THE UNITED STATES & MEXICO". Each title includes, in addition, reference to the Joint Commission under one or the other of the treaties, to the year of the survey, and to the astronomer, the surveyor, and the assistant surveyors who worked in the area covered by the map sheet.

Map 1 covers the boundary from a point in the Gulf of Mexico, "three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte . . . from thence, up the middle of that river, following the deepest channel", to a point above Brownsville, Texas. It is entitled, "BOUNDARY BETWEEN THE UNITED STATES & MEXICO Agreed upon by the Joint Commission under the Treaty of GUADALUPE HIDALGO; Surveyed in 1853 under the direction of Bvt. Major W. H. EMORY, Corps of Topographical Engineers, Chief Astronomer and Surveyor; by Mr. CHA<sup>s</sup> RADZI- MIŃSKI, Prin<sup>o</sup>l Ass<sup>t</sup> Surveyor, and Mr. ARTHUR SCHOTT, Ass<sup>t</sup> Surveyor." On the face of the map is a note in draftsman's lettering which reads as follows:

Note—This map is compiled from surveys made  
 in 1853 by Mr. Cha<sup>s</sup> Radzimiński, Prin<sup>o</sup>l Surveyor U.S.B.C.  
 and Mr. Arthur Schott, Assistant d<sup>e</sup>  
 in 1854 by Mr. W. E. Greenwell, Ass<sup>t</sup> Coast Survey.  
 in 1847 by Lieut. J. D. Webster, Corps of Topl Eng<sup>rs</sup>

Major W. H. Emory's Astron<sup>l</sup> Station (marked★) near the mouth of the Rio Bravo del Norte, as determined in 1853, is in Long. 97°07'37".3 West of Greenwich, Lat. 25°57'21".8 North.

Old Fort Brown as determined by Maj. Emory in 1853 is in Lat. 25°53'16".3  
 The soundings are expressed in fathoms

Maps 2 to 28 cover the boundary in the Rio Grande from a point just above Brownsville nearly to El Paso. Their titles are the same as the title on map 1, except as they vary in the date of the survey and in the names of the assistant surveyors.

The year 1853 is given as the date of survey on maps 1, 2, 3, 4, 5, 6, 7, 16, and 17; 1852-53 on map 15; and 1852 on maps 8, 9, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.

The titles on maps 1 to 28 indicate that the boundary covered by those maps was surveyed under the direction of Brevet Major W. H. Emory, Corps of Topographical Engineers, Chief Astronomer and Surveyor. The persons indicated on the maps as having carried out the survey, their names given here as they appear on the maps, are: on maps 1 and 4, Charles Radzimiński, Principal Assistant Surveyor, and Arthur Schott, Assistant Surveyor; on maps 2 and 3, Charles Radzimiński, Principal Assistant Surveyor; on maps 5 to 14, Arthur Schott, Assistant Surveyor; on map 15, Lieutenant N. Michler, Jr., Corps of Topographical Engineers, and Arthur Schott, Assistant Surveyor; on maps 16 and 17, Lieutenant N. Michler, Jr., Corps of Topographical Engineers; on maps 18 to 21, M. T. W. Chandler, Assistant Surveyor; on map 22, M. von Hippel and M. T. W. Chandler, Assistant Surveyors; and on maps 23 to 28, M. von Hippel, Assistant Surveyor.

The latitudes and longitudes of astronomical stations, as determined by Major Emory and by Lieutenant Michler, are given in notes on the maps; other stations along the Rio Grande for the most part are indicated merely by their location on the maps. Major Emory's stations are identified as follows: Edinburgh, map 3; Ringgold Barracks and Roma, map 4; Bellville, map 6; Fort McIntosh, map 8; Eagle Pass, map 12; "opposite Presidio del Norte",<sup>1</sup> map 22; and "near the mouth of the Cañon", map 27. Notes on Lieutenant Michler's stations 1 to 7 are given on maps 15, 16, and 17.

Annotations initialed by Major Emory appear on three maps as follows: map 23, "These plls should be all shifted South to correspond with the Lat of Vado de Piedras (29°52'36''8.) W. H. E."; map 24, "The plls of Lat on this Map should be shifted to bring IX in Lat: 30°5'24'' W. H. E."; and map 25, "The parallels on this map should be shifted to bring Pilares in Lat 30°25'9'' W. H. E."

At the lower right on each map the name of the draftsman is indicated, for example: on maps 1, 27, and 28, "Drawn by Francis Herbst". Other draftsmen named and the maps on which their names appear are: William Luce, maps 2, 6, 7, 11, and 14; Charles Mahon, maps 3, 4, 8, 10, 22, 23, 25, and 26; Theodore H. Oehlschlager, maps 5, 9, 12, 16, 21, and 24; J. R. P. Mechlin, map 13; Joseph Welch, maps 15 and 20; John E. Weyss, map 17; E. Freyhold, map 18; and M. C. Grilzner, map 19.

Map 29 covers the boundary in the Rio Grande from the latitude of the town of "San Elceario" (San Elizario, Texas) to the "initial point" in that stream at 31°47' north latitude, together with the

<sup>1</sup> Ojinaga, Chihuahua (opposite Presidio, Texas).

eastern portion of the boundary section which extends westward from that point along the parallel of  $31^{\circ}47'$ . The map is entitled: "BOUNDARY BETWEEN THE UNITED STATES & MEXICO shewing the INITIAL POINT under the Treaty of December 30<sup>th</sup> 1853, Astronomically determined and surveyed in 1855, under the direction of WILLIAM H. EMORY, U.S. Commissioner. Latitude and Longitude by W. H. EMORY, assisted by J. H. CLARK, Triangulation and Topography by M. VON HIPPEL assisted by J. E. WEYSS Projected & drawn by F. HERBST." No table or note showing positions astronomically determined is given on the map. On the old cloth mounting appears in hand lettering: "Boundary between the United States and Mexico 1855 8-9".

This map 29, an original, was signed by the American Commissioner and verified by Captain George Thom, of the Topographical Engineers, United States Army. Probably it was signed by the Mexican Commissioner also. Two signatures and the verification have been erased. Commissioner Emory's signature, written as it appears on other signed originals, is identifiable despite erasure, as is also the verification by Captain Thom. Only an erasure appears in the position where the Mexican Commissioner presumably signed. Above the erasures appears this note in draftsman's lettering:

This Map has been compared with the corresponding Map of the Mexican Commission and is found to represent the true Boundary. The two Maps agree, except in the bed of the River, which circumstance is the consequence of the two Surveys being made at different periods, six months apart, during which time the River changed its bed, as it is constantly doing, but always within narrow limits.

Filed with this map 29 is a printed copy thereof which is crepelled, mounted on cloth, and bound after the manner of the signed originals. It is not a signed copy, however. The lettered note above quoted and the names of the Commissioners that appear on this bound printed copy were printed from an engraved plate.

When the case of "El Chamizal"<sup>1</sup> (a tract of about 637 acres lying in El Paso, Texas) was under consideration by the International Boundary Commission organized in 1893 under the convention of March 1, 1889 (26 Statutes at Large, 1512-17), the matter of the unsigned American original was made the subject of correspondence between the American Commissioner, Colonel Anson Mills, and the Secretary of State. In a letter, dated at El Paso December 11, 1895, to Secretary of State Richard Olney, Colonel Mills wrote (Proceedings of the International (Water) Boundary Commission, United States and Mexico, Treaties of 1884 and 1889, I, 45):

I have the honor to enclose herewith the original copy of the journal of the Joint Commission of this day, by which you will observe that in addition to the difficulties and embarrassments surrounding the Chamizal Case No. 4, mentioned in my letter of the 10th instant, new difficulties have arisen from the facts stated in the journal, the principal of which is that the photographic copy of the original map on file in the State Department, Sheet No. 29 of the Emory Survey, is without the signature of either of the Commissioners and the photograph shows some evidence that it had been duly signed and erased, and as this United States map

<sup>1</sup> Regarding this case, see Hackworth, Digest of International Law, I, 409-17.

bears a note upon its face to the effect that it was made six months subsequent to the map of the Mexican Commission, and showed considerable discrepancy, the greatest being probably 150 yards at or near the point where the Mexican claim of avulsion is alleged to have taken place. The Mexican Commissioner declined positively to give this map any official consideration.

At a meeting of the Commission at El Paso on March 23, 1896, the United States Commissioner presented a communication from the Secretary of State dated February 27, 1896, "instructing him to abandon the United States Sheet No. 29, of the Emory and Salazar Survey, . . . and to rely wholly upon the Mexican copy of said map, Sheet No. 29, when presented and duly authenticated, for the determination of all cases hereafter to arise in the locality covered by it" (*ibid.*, 48).

In the Proceedings of the International (Water) Boundary Commission, previously cited, there appear, on "pages" 99 and 100, two double-page copies of map 29, each bearing a supplementary title, boxed in double lines. One of the supplementary titles reads: "Photolithographic Copy of Major Emory's Original United States Sheet No. 29 of the Commission of 1853-1855. Rejected by Mexico Because of the Absence and Evident Erasure of Signatures, and Abandoned by the United States as Having No Legal Significance"; the other reads: "Photolithographic Copy of Salazar Ilarregui's Original Mexican Sheet No. 29, of the Commission of 1853-1855. Accepted and Adopted by Both the United States and Mexico, as the Only Legal and Authoritative Map Since the Rejection and Abandonment of Emory's United States Sheet No. 29". Below each such title are printed the signatures of Anson Mills and Jacobo Blanco, Commissioners, and the signatures of the Consulting Engineers. The place and date in each case are given as "El Paso, Texas, March 1<sup>st</sup> 1899".

The first of the photolithographic copies is of the American original of map 29 described in these notes. It is without color, as is the original drawing, and is "reduced one half". The other copy, of the Mexican original, is reproduced in color and likewise "reduced one half".

The photolithographic copy of the Mexican original bears a table of positions astronomically determined. Such a table does not appear on the American original but does appear on the printed copper-plate copies filed with the American originals; the positions do not agree precisely with those given on the reproduced Mexican original.

The signatures and abbreviated titles of Emory and Salazar on the "Original Mexican Sheet No. 29" as reproduced in the Proceedings of the International (Water) Boundary Commission are similar to those on signed American originals.

Maps 30 to 45 cover the boundary from the Rio Grande to the Colorado River and (map 45) northward along that stream. Maps 30 to 32 cover the boundary along the parallel of 31°47' north; maps 32 and 33, the boundary along the meridian of 108°13'24".05 west; maps 33 to 38, the boundary along the parallel of 31°20' north; maps 38 to 44, the azimuth line from the intersection of the parallel of

31°20' with the meridian of 111° to the Colorado; and map 45 covers the two "initial points" on the Colorado River. The main title on each of these maps is: "BOUNDARY BETWEEN THE UNITED STATES & MEXICO Agreed upon by the Joint Commission under the Treaty of December 30<sup>th</sup> 1853."

On each map the title continues: "Surveyed in 1855, under the direction of WILLIAM H. EMORY, U.S. Commissioner"; on maps 38 to 45 this is added thereto: "and JOSÉ SALAZAR YLARREGUI Mexican Commissioner"; and in each case the personnel concerned with the survey is then named. On maps 30 to 36 the titles indicate: "Triangulation and Topography by M. VON HIPPEL, assisted by J. E. WEYSS"; on map 37: "Triangulation and Topography by M. VON HIPPEL, assisted by J. E. WEYSS of east end; M. T. W. CHANDLER, assisted by F. WHEATON of west end"; and on maps 39 to 45: "Triangulation and Topography by N. MICHLER, Lt. Top<sup>l</sup> Eng<sup>rs</sup> U.S.A. assisted by A. C. V. SCHOTT, Ass<sup>t</sup> Surveyor, and FRANCISCO JIMENEZ, 1<sup>st</sup> Engineer, assisted by M. ALEMAN and A. DIAZ, 2<sup>nd</sup> Engineers, Mexican Commission, both parties working conjointly".

The full title continuation on map 38 is: "Surveyed in 1855, under the direction of WILLIAM H. EMORY, U.S. Commissioner, and JOSÉ SALAZAR YLARREGUI Mexican Commissioner, Latitude and Longitude of Observatory by J. H. CLARK, assisted by H. CAMBELL. Triangulation and Topography by N. MICHLER, Lt. Top<sup>l</sup> Eng<sup>rs</sup> U.S.A., A. C. V. SCHOTT, and M. T. W. CHANDLER, U.S. Commission, and FRANCISCO JIMENEZ, 1<sup>st</sup> Engineer, M. ALEMAN and A. DIAZ, 2<sup>nd</sup> Engineers, Mexican Commission. draawn by J. E. WEYSS."

The draftsmen named and the maps on which their names appear are William Luce, maps 30, 37, 39, and 40; John E. Weyss, maps 31, 35, and 38; Joseph Welch and Francis Herbst, map 32; Felix Nemegeyi, map 33; Maurice von Hippel and Felix Nemegeyi, map 34; Albert de Zeyk, map 36; Charles László, map 43; H. C. Evans and Charles László, map 44; no draftsman is indicated on maps 41, 42, and 45.

Map 44 shows the boundary extending southeastwardly from the initial point on the Colorado across the "Neutral Ground between the Co-Co-Pas and the Yu-mas or Co-Cha-Nos", and ascending the uplands that lie to the east. The position of that initial point on the Colorado is marked by a symbol, and the monuments are numbered from west to east.

Map 45 covers the Colorado River section of the boundary. It shows the initial point several miles below the junction of the Gila River with the Colorado from which the boundary extends westwardly to the Pacific, and the initial point "twenty english miles below the junction of the Gila and Colorado rivers" (Article 1) from which the boundary extends to the east. The map bears the following table:



## Positions Astronomically determined.

Stations (marked ★)	Latitude (North)	Longitude (West from Greenwich)
Monument (near Junction of the Rio Gila & Colorado)	32°43'31''06	114°36'22''20
Initial Point on the Rio Colorado (in River)---	32°29'44''45	114°48'44''53
Monument N <sup>o</sup> II. (on the desert & made of cast iron)	32°29'01''48	114°46'14''43

The Magnetic Variation at Initial Point in March 1855, 12°37'30'' East of North.

Azimuth of the Boundary-California-Line (from the Rio Colorado to the Pacific Ocean) at the Junction of the Gila and Colorado, 85°34'47''49, South West.

Azimuth of the Boundary-Sonora-Line (from the Rio Colorado to the Intersection of the 111<sup>th</sup> Meridian west of Greenwich, and parallel 31°20' North) at the Initial Point on Colorado, 71°20'43''08, South East.

Azimuth of Sonora-Line at Monument N<sup>o</sup> II, 71°19'23''18, South East.

Astronomical Determinations by Lieuts. Whipple, Michler and Señor Jimenez.

The position of "Monument N<sup>o</sup> VI", the monument farthest east on the line from the Colorado to the Pacific, is shown on map 45. The former "Monument N<sup>o</sup> VII", which had been located near the junction of the Gila and Colorado Rivers under the Treaty of Guadalupe Hidalgo, is indicated in lettering on the map, just to the west of the lower reaches of the Gila, but no symbol marking the location of the monument is discernible. The initial point on the Colorado "twenty english miles below the junction of the Gila and Colorado rivers" is indicated by a star in the middle of the river. Lieutenant Michler, who ran the boundary eastward from this point, wrote (Emory Report, 114):

As it was impossible to mark the exact initial point in the middle of the stream, Mr. Jimenez and myself established the first monument 3,164.84 feet distant from it, in the direction of the line [i.e., from west to east]. . . . Monument II, of cast iron, and pyramidal in form, is placed on the edge of the sand plain, as this position is more permanent and free from the action of freshets in the Colorado.

Lieutenant Michler's observatory, referred to as point "F'", was "distant from the junction of the Colorado and Gila, in a straight line, 104024.34 feet; the azimuth of this line, at the point 'F', is 36°14'10'' N.E., and its length is 1575.66 feet short of twenty miles" (Emory Report, 169).

"The initial point, in the middle of the Colorado, was determined by prolonging the line from the junction, passing through 'F' 1575.66 feet, . . . thus laying off a radius of twenty miles. At the extremity of this line, a perpendicular was erected, or, in other words, a tangent was drawn to the circumference of a circle with that radius and the junction as a centre, and, by means of the following table, the circle was described" (*ibid.*, 169-70). Following the course of the Colorado, the initial point was located 27.9 miles below the junction (*ibid.*, 114).

According to the determinations of the Commission under the

Gadsden Treaty, the latitude of the junction was  $32^{\circ}43'32''.3$  north and the latitude of the initial point on the Colorado was  $32^{\circ}29'44''.45$  north (*ibid.*, 166-67). Thus the latitude of the initial point was about 15.8 miles south of the latitude of the junction.

It is to be remembered that the distance of twenty miles (20.1 miles by map 45) from the junction of the Gila and Colorado to the southerly of the two initial points on the Colorado was measured from the junction, not due south, but well to the west of south; and that the boundary runs from that southerly initial point up the Colorado, not to its junction with the Gila, but only to the northerly of the two initial points on the Colorado, which is nearly seven miles almost west of the junction point. See the discussion in volume 5, pages 415-19, and the map of November 1849 facing page 418, where the northerly initial point on the Colorado is shown just to the south of "Emigrant crossing".

Maps 46 to 54 cover the boundary from the Colorado to the Pacific Ocean. The main title on each of these maps is: "BOUNDARY BETWEEN THE UNITED STATES & MEXICO agreed upon by the Joint Commission under the Treaty of GUADALUPE HIDALGO;". On maps 46 to 53 the title continues: "determined under the direction of Bvt. Major W. H. EMORY, Corps Topographical Engineers, Chief Astronomer; surveyed in 1850, by Bvt. Capt. [on maps 46 and 47, "Capt."] E. L. F. HARDCASTLE, Corps Top<sup>l</sup> Eng<sup>rs</sup>. Honble. J. B. WELLER, U.S. Commissioner." The continuation on map 54 is: "Determined Astronomically in 1849, Bvt. Major W. H. EMORY, Top<sup>l</sup> Eng<sup>rs</sup>, Chief Astronomer. Topography By By<sup>t</sup> Capt. E. L. F. Hardcastle, Corps of Top. Eng<sup>rs</sup> and Andrew B. Gray, U.S. Surveyor, in 1849. 1850. Honble. J. B. WELLER. U.S. Comm<sup>r</sup>".

The draftsmen named on maps 46 to 54, and the maps on which their names appear, are: Theodore H. Oehlschlager, maps 46, 47, 48, and 49; P. Harry, maps 51 and 52; and Joseph Welch, maps 50, 53, and 54.

On map 54, offshore and parallel to the coast, are the words "Initial Point"; and a short distance inland, parallel to the coast, are the words "Monument No. I". The symbol marking the position of the initial point, "one marine league due south of the southernmost point of the Port of San Diego", is scarcely identifiable.

The five sheets covering the islands in sections of the Rio Grande are entitled: "ISLANDS IN THE RIO BRAVO DEL NORTE. Shewing the main channel and to which country they belong under the Treaty of GUADALUPE HIDALGO; Surveyed in 1853 [on the fifth sheet, "1852"], under the direction of Bvt. Major W. H. EMORY, Corps of Topographical Engineers, Chief Astronomer and Surveyor". To this title there is added: on sheet 1, "by Mr. CHA<sup>s</sup> RADZIMINSKI, Principal Assistant Surveyor"; on sheets 2, 3, and 4, "by Mr. ARTHUR SCHOTT, Ass<sup>t</sup> Surveyor"; and on the fifth sheet, "by G. C. GARDNER Ass<sup>t</sup> Surveyor". Preceding each title on sheets 1 to 4, the sheet is numbered in this fashion: "Sheet N<sup>o</sup> 1". The five sheets were drawn by Charles László.

The fifth of these sheets is annotated and initialed by Major Emory in this manner: "See Sheet N<sup>o</sup> 22. W. H. E." It is an enlargement of a section of the Rio Grande to the east of "Presidio del Norte" which is covered by map 22.

Major Emory wrote thus concerning the islands shown on the five sheets (Emory Report, 65):

One of the most important duties of our survey was to determine to which side the islands in the Rio Bravo belonged. For this purpose it was agreed between the Mexican commissioner and myself to sound the river on each side of every island, and the centre of the deepest channel should be the boundary line. From the mouth of the river to Ringgold Barracks there are eleven islands, marked on the map from 1 to 11, commencing at the mouth, and this order of numbering the islands is observed until we reach the parallel of 31°47', where the boundary leaves the river. The sheets of the boundary, on a scale of  $\frac{1}{40000}$ , are numbered from 1 to 54. . . . The islands are numbered on these sheets to indicate their geographical position, but they are represented also on separate sheets on a scale of  $\frac{1}{6000}$ , to show their topographical and hydrographic details, and to exhibit upon what data they have been allotted to the United States or to Mexico.

. . . The allotment of all the islands was made upon the condition of things as they existed when the boundary was agreed upon.

The four index maps show diagrammatically the positions of maps 1 to 54. Index map 1 shows the positions of maps 1 to 13; index map 2, the positions of maps 14 to 29; index map 3, the positions of maps 29 to 39; and index map 4, the positions of maps 40 to 54. The sheets bear the following titles:

INDEX MAP N<sup>o</sup> 1. RIO BRAVO DEL NORTE SECTION OF BOUNDARY BETWEEN THE UNITED STATES & MEXICO; Agreed upon by the Joint Commission under the Treaty of GUADALUPE HIDALGO; Surveyed in 1852-3 under the direction of Bvt. Major W. H. EMORY, Corps of Topographical Engineers, Chief Astronomer and Surveyor, by Mr. CHA<sup>s</sup> RADZIMINSKI, Principal Assistant Surveyor. Mr. ARTHUR SCHOTT, Assistant Do. [i.e., Assistant Surveyor].

INDEX MAP N<sup>o</sup> II. RIO BRAVO DEL NORTE SECTION OF BOUNDARY BETWEEN THE UNITED STATES & MEXICO Agreed upon by the Joint Commission under the Treaty of GUADALUPE HIDALGO; Surveyed in 1852-3 under the direction of Bvt. Major W. H. EMORY Corps of Topographical Engineers, Chief Astronomer and Surveyor.

INDEX MAP N<sup>o</sup> 3. BOUNDARY BETWEEN THE UNITED STATES & MEXICO Agreed upon by the Joint Commission under the Treaty of December 30<sup>th</sup> 1853. Surveyed in 1855, under the direction of Major W. H. EMORY, U.S. Commissioner.

MAP N<sup>o</sup> 4 BOUNDARY BETWEEN THE UNITED STATES & MEXICO Agreed upon by the Joint Commission under the Treaties of GUADALUPE HIDALGO; and DECEMBER 30<sup>th</sup> 1853. Surveyed in 1849 and 1854-55. John B. Weller. U.S. Comm<sup>r</sup> in 1849 & W<sup>m</sup> H. Emory. Major. First Cav<sup>y</sup> U.S. Comm<sup>r</sup> in 1854 & 55. Published by authority of Honorable J. THOMPSON. Secretary of the Interior.

Index map 1 was drawn by Francis Herbst and Thomas Jekyll; index map 2, by Francis Herbst; index map 3, by Francis Herbst and Thomas Jekyll ("& John de la Camp", according to an annotation in pencil). No draftsman is indicated on index map 4.

## MAPS INTENDED TO ACCOMPANY THE EMORY REPORT

Major Emory's plans for bringing his work to a conclusion are set forth in a lengthy communication to Secretary Thompson under date of October 7, 1857, from which the following excerpts are taken (Emory Correspondence):

Congress at its last Session ordered an edition of my report published and I have now to report to you the state of that work and to make some suggestions in regard to its future progress and to ask your instructions in regard thereto.

The first Volume, embracing my own report, has been printed with all the illustrations, for more than three months, but is not distributed in consequence of the non-completion of the General Map and the Geological Map, which, by contract, were to have been finished in September. . . .

Index maps 1, 2, 3 & 4 may or may not be issued with the report as Congress or the Secretary may direct. . . .

On the 1<sup>st</sup> of this month, all the employees of the Boundary Commission were discharged, except Mr Jekyll, Draughtsman, and one Clerk . . . and . . . Messenger. . . . I recommend that Mr Jekyll be retained till further orders; his presence is necessary with the Map Engraver. . . .

I request to be permitted to retain the General Supervision over the preparation and publication of my work, and, for this purpose ask to be allowed to retain my per diem . . . & to be allowed one room . . . as an Office for the collection, revision and arrangement of proofs and Manuscripts.

Should these requests be acceded to, I beg to be permitted to report to the War Department, for duty with the Army. My Regiment is stationed at Fort Leavenworth and my military duties will not materially interfere with that sort of General Supervision which, it is essential to my personal reputation that I shall retain over my work, until it goes to the Public. My connection with the Boundary Survey has involved the necessity of retaining my family here at Washington, which, otherwise, could have gone with me to the West.

Secretary Thompson wrote to Major Emory on October 19, 1857, concurring in the main with his suggestions and instructing him to turn over to Albert H. Campbell, General Superintendent of Pacific Wagon Roads in the Department of the Interior, all the engraved plates<sup>1</sup> and other property pertaining to the Commission. The instruction continued (D.S., United States-Mexico Boundary, Department of the Interior Letter Book, January 19, 1849-November 16, 1858, 321-22, hereinafter cited as "Letter Book"):

You are permitted to retain the general supervision of the preparation and publication of your work; and all proofs and manuscripts of the unfinished portions of it will be submitted for your certification, if practicable, before the approval of the Department be given.

Soon after Major Emory rejoined his regiment, he received a letter of November 23, 1857, from Secretary Thompson saying that the title page of the first volume of the boundary survey report was not "a proper one for a work of its character" and asking that it be

<sup>1</sup> Most of the engraved plates were not of maps but of pictorial views and of botanical and geological specimens. An enumeration of the boundary material turned over to Campbell on October 19, 1857, for future delivery to the Superintendent of Public Printing, includes: "4 copper plates (Index Maps 1, 2, 3, & 4) 3 & 4 are in the hands of Seibert"; "1 copper plate Mouth of Rio Bravo, alto & basso of same"; "1 copper plate El Paso sheet, basso of same"; "1 copper plate San Diego sheet" (D.S., United States-Mexico Boundary, envelope 7, Abstracts, Estimates, Proposals, and Contracts Relating to the Emory Report).

modified in accordance with forms submitted by the Secretary, which would give credit to the Department of the Interior (*ibid.*, 327-28).

In a reply dated at Fort Riley, Kansas Territory, December 13, 1857 (Emory Correspondence), Major Emory defended the title given his document by the President in his message to Congress and used by Secretary of the Interior McClelland. He wrote:

It was therefore not only natural but proper for me to adopt as a title for my report that which had occurred to the minds of others as the most suitable to identify it. The only apparent omission in the title which occurred to me at the time was, that of the words "Department of the Interior" but that could not be inserted without also inserting the Department of State which had charge of the work and gave all the original instructions, and it was deemed of little consequence because full and ample reference was made to both Departments in the Report.

Secretary Thompson on December 19, 1857, instructed the Superintendent of Public Printing to "cancel the title page to Maj Emory's Report (1<sup>st</sup> Vol) on the U. States and Mexican boundary Survey and substitute the accompanying one" (Letter Book, 329-30). The draft of a title page therewith, apparently intended for both the House and Senate prints, has the same wording for the title as that which appears in Senate Executive Document No. 108, 34th Congress, 1st session (serial 832): "Report on the United States and Mexican Boundary Survey made under the direction of the Secretary of the Interior by William H. Emory Major First Cavalry and U.S. Commissioner". But of copies of the report which have been examined, that printed as House Executive Document No. 135, 34th Congress, 1st session (serial 861), includes on the title page no reference to the Department or Secretary of the Interior; its title reads: "United States and Mexican Boundary Survey. Report of William H. Emory Major First Cavalry and U.S. Commissioner".

Notwithstanding the optimism of Major Emory as to the possibility of supervising completion of the maps while on duty with his regiment, the correspondence reveals that difficulties arose. This excerpt is from a letter of December 19, 1857, addressed by Campbell to Major Emory, "Commanding Ft. Riley Kansas Terr<sup>y</sup>" (Letter Book, 330-32):

Your note of the 28<sup>th</sup> ult. came to hand on the 15<sup>th</sup> inst. I sent it with Mr Jeykll to Mrs Emory to see and advise with her upon the Subject, before I brought the matter before the Secretary for advisement. I sent to her to ascertain if by any possible arrangement the proof of the Gen<sup>l</sup> map could be revised here in order to save time. You will readily perceive that it will take 30 days to send and receive a package from you and allowing a week to read the proof and 4 weeks to print the edition ordered and 4 weeks to bind the vol. it will delay the distribution of the report at least three months. When the Secretary from the understanding that the map was to be finished on Jan<sup>y</sup> 1<sup>st</sup> and that Mr Jeykll and myself could correct the proof has pledged himself in his report to have the vol. issued early in January.

Mr<sup>s</sup> Emory signified her willingness to assist all she could, but said that you were very positive about such matters &c She also sent the books stating that you might want them if it was not decided to wait your revision. I will send them with the proofs which I shall have on Monday (the 21<sup>st</sup>)

A letter written to Secretary Thompson by Major Emory at Fort Riley on January 17, 1858, includes these passages (Emory Correspondence):

Your letter of the 31<sup>st</sup> states that [index] maps 3 & 4 are done, supposing from this the work on them closed I have not returned 4 and should not return 3, but there are some omissions so important, yet so easily added, I hope it will not be too late to adopt them. These proof maps were not received by me until they were pronounced at the Dept *done*.

The same remark applies to Gnl Map, . . . as it was mailed only two days before it was to be called in.

A letter of Campbell to Major Emory of January 27, 1858, includes this paragraph (Letter Book, 339):

Enclosed please find a proof of the General Map as completed. I notified the Supt of Pub. Printing that the plate was ready for him whenever he was ready to print. He informed me that he had ordered the paper but it will not be manufactured for some time. I shall turn over the plate to-morrow, and today I shall turn over to the Supt the four index maps and the El Paso and Rio Grande plates. The committee will probably permit but a reasonable edition of them.

So far as the correspondence examined reveals, the general map was the only one of the maps submitted to Major Emory in the West, that was approved by him for publication. That map was approved in a letter of February 21, 1858 (Emory Correspondence).

On the same date as the letter last cited, Major Emory addressed Secretary Thompson, stating that he found it necessary to be relieved from further duty in the preparation of the boundary report, though he indicated that he would continue to correct the proofs, etc., sent to him until he was notified that other arrangements had been made (Emory Correspondence); and Major Emory was so relieved, effective March 31 (Letter Book, 350, letter of March 13, 1858, from Secretary Thompson to Major Emory).

In response to a resolution of the Senate of March 12, 1858, requesting information on the progress of the boundary report, Secretary of the Interior Thompson stated under date of March 24 (Senate Executive Document No. 37, 35th Congress, 1st session, serial 929, p. 1):

The first volume of the report of Major W. H. Emory on the United States and Mexican boundary survey is completed, and nearly ready for distribution. . . .

There are to accompany the report, but not to be bound in the volumes, four index maps on copper, showing the boundary line from the Gulf of Mexico to the Pacific ocean, and two sectional maps on copper, *i.e.*, initial point of boundary on Gulf of Mexico, and initial point of boundary near El Paso. These maps are completed, and in the hands of the Superintendent of Public Printing.

No maps were published with the first volume of the Emory Report other than the general map and the geological map which are bound into the volume. However, a limited number of proof impressions were made of the index maps and of maps 1 and 29 of the main series. Several of these proof impressions are filed with the originals.

In a letter of January 5, 1858, to Senator William M. Gwin, of California, Chairman of the Select Committee on the Pacific Railroad, Secretary Thompson wrote: "There are some proof impressions of Index Maps No<sup>s</sup> 3 & 4 being printed for the use of the Department." Three sets of those proofs were sent to Senator Gwin on the following day (Letter Book, 335, 336).

Publication of the first volume of the Emory Report is recorded in a letter addressed to Major Emory by Secretary Thompson on May 15, 1858, in which he acknowledged receipt from Mrs. Emory of twenty copies of the volume (*ibid.*, 371).

#### TREATIES AND OTHER INTERNATIONAL ACTS APPLICABLE TO THE BOUNDARY BETWEEN THE UNITED STATES AND MEXICO

1. Treaty of Guadalupe Hidalgo. Treaty of Peace, Friendship, Limits, and Settlement (with additional and secret article which was not ratified), with Map of the United Mexican States and with Plan of the Port of San Diego, signed at Guadalupe Hidalgo February 2, 1848. (Treaty Series No. 207; 9 Statutes at Large, 922-43.) Originals of the treaty and additional and secret article in English and Spanish. Treaty and additional and secret article submitted to the Senate February 23, 1848. (Message of February 22, 1848.) Map of the United Mexican States and Plan of the Port of San Diego submitted to the Senate March 7, 1848. Resolution of advice and consent, with amendments (including the striking out of the additional and secret article), March 10, 1848. Ratified by the United States March 16, 1848. Ratified by Mexico May 30, 1848. Ratifications exchanged at Querétaro May 30, 1848. Proclaimed July 4, 1848.

2. The Gadsden Treaty, signed at Mexico City December 30, 1853. (Treaty Series No. 208; 10 Statutes at Large, 1031-37.) Original in English and Spanish. Submitted to the Senate February 10, 1854. Resolution of advice and consent, with amendments, April 25, 1854. Ratified by the United States June 29, 1854. Ratified by Mexico May 31, 1854. Ratifications exchanged at Washington June 30, 1854. Proclaimed June 30, 1854.

3. Convention Defining the Manner in Which the Monuments Marking the International Boundary Are to Be Restored to Their Proper Places and New Ones Erected, signed at Washington July 29, 1882. (Treaty Series No. 220; 22 Statutes at Large, 986-90.) Original in English and Spanish. Submitted to the Senate August 3, 1882. (Message of August 1, 1882.) Resolution of advice and consent August 8, 1882. Ratified by the United States January 29, 1883. Ratified by Mexico November 7, 1882. Ratifications exchanged at Washington March 3, 1883. Proclaimed March 5, 1883.

4. Convention Touching the Boundary Line between the Two Countries Where It Follows the Bed of the Rio Grande and the Rio Colorado, signed at Washington November 12, 1884. (Treaty Series No. 226; 24 Statutes at Large, 1011-14.) Original in English

and Spanish. Submitted to the Senate December 3, 1884. Resolution of advice and consent March 18, 1885. Modifications proposed by the Government of Mexico December 11, 1885. Resubmitted to the Senate with said modifications February 8, 1886. (Message of February 4, 1886.) Resolution of advice and consent June 23, 1886. Ratified by the United States July 10, 1886. Ratified by Mexico August 11, 1886. Ratifications exchanged at Washington September 13, 1886. Proclaimed September 14, 1886.

5. Additional Article Extending the Time Fixed by Article 8 of the Convention of July 29, 1882, signed at Washington December 5, 1885. (Treaty Series No. 229; 25 Statutes at Large, 1390-92.) Original in English and Spanish. Submitted to the Senate December 14, 1885. Resolution of advice and consent, with amendment, June 21, 1886. Ratified by the United States June 23, 1887. Ratified by Mexico May 18, 1887. Ratifications exchanged at Washington June 27, 1887. Proclaimed June 28, 1887.

6. Convention to Revive the Provisions of the Convention of July 29, 1882, and to Extend the Time Fixed by Article 8 Thereof, signed at Washington February 18, 1889. (Treaty Series No. 231; 26 Statutes at Large, 1493-96.) Original in English and Spanish. Submitted to the Senate February 28, 1889. (Message of February 27, 1889.) Resolution of advice and consent March 26, 1889. Ratified by the United States April 30, 1889. Ratified by Mexico August 14, 1889. Ratifications exchanged at Washington October 12, 1889. Proclaimed October 14, 1889.

7. Convention to Facilitate the Carrying Out of the Principles Contained in the Convention of November 12, 1884, signed at Washington March 1, 1889. (Treaty Series No. 232; 26 Statutes at Large, 1512-17.) Original in English and Spanish. Submitted to the Senate March 2, 1889. Resolution of advice and consent, with amendment, May 7, 1890. Ratified by the United States December 6, 1890. Ratified by Mexico October 31, 1890. Ratifications exchanged at Washington December 24, 1890. Proclaimed December 26, 1890.

8. Convention Further Extending the Time Fixed by Article 8 of the Convention of July 29, 1882, signed at Washington August 24, 1894. (Treaty Series No. 235; 28 Statutes at Large, 1213-15.) Original in English and Spanish. Submitted to the Senate August 27, 1894. Resolution of advice and consent August 27, 1894. Ratified by the United States September 1, 1894. Ratified by Mexico October 3, 1894. Ratifications exchanged at Washington October 11, 1894. Proclaimed October 18, 1894.

9. Convention Extending the Duration of the Convention of March 1, 1889, signed at Washington October 1, 1895. (Treaty Series No. 236; 29 Statutes at Large, 841-43.) Original in English and Spanish. Submitted to the Senate December 17, 1895. Resolution of advice and consent December 17, 1895. Ratified by the United States



December 20, 1895. Ratified by Mexico November 5, 1895. Ratifications exchanged at Washington December 21, 1895. Proclaimed December 21, 1895.

10. Protocol Providing for the Ascertainment of the Facts Relating to the Irrigation of the Arid Lands in the Valley of the Rio Grande and to Other Matters, signed at Washington May 6, 1896. Original in English and Spanish. Effective upon signature and not submitted to the Senate. (The English version is printed in Proceedings of the International (Water) Boundary Commission, United States and Mexico, Treaties of 1884 and 1889, II, 275.)

11. Convention Further Extending the Duration of the Convention of March 1, 1889, signed at Washington November 6, 1896. (Treaty Series No. 238; 29 Statutes at Large, 857-59.) Original in English and Spanish. Submitted to the Senate December 9, 1896. Resolution of advice and consent December 10, 1896. Ratified by the United States December 15, 1896. Ratified by Mexico December 3, 1896. Ratifications exchanged at Washington December 23, 1896. Proclaimed December 23, 1896.

12. Convention Further Extending the Duration of the Convention of March 1, 1889, signed at Washington October 29, 1897. (Treaty Series No. 240; 30 Statutes at Large, 1625-27.) Original in English and Spanish. Submitted to the Senate December 15, 1897. (Message of December 7, 1897.) Resolution of advice and consent December 16, 1897. Ratified by the United States December 20, 1897. Ratified by Mexico November 12, 1897. Ratifications exchanged at Washington December 21, 1897. Proclaimed December 21, 1897.

13. Convention Further Extending the Duration of the Convention of March 1, 1889, signed at Washington December 2, 1898. (Treaty Series No. 241; 30 Statutes at Large, 1744-46.) Original in English and Spanish. Submitted to the Senate December 7, 1898. (Message of December 6, 1898.) Resolution of advice and consent December 8, 1898. Ratified by the United States December 12, 1898. Ratified by Mexico December 15, 1898. Ratifications exchanged at Washington February 2, 1899. Proclaimed February 3, 1899.

14. Convention Further Extending the Duration of the Convention of March 1, 1889, signed at Washington December 22, 1899. (Treaty Series No. 243.) Original in English and Spanish. Submitted to the Senate January 4, 1900. Resolution of advice and consent February 8, 1900. Ratified by the United States February 14, 1900. Ratified by Mexico April 14, 1900. Ratifications exchanged at Washington May 5, 1900. Proclaimed May 7, 1900.

15. Convention Further Extending Indefinitely the Duration of the Convention of March 1, 1889, signed at Washington November 21, 1900. (Treaty Series No. 244; 31 Statutes at Large, 1936-38.) Original in English and Spanish. Submitted to the Senate December 5, 1900. Resolution of advice and consent December 15, 1900. Rati-

fied by the United States December 24, 1900. Ratified by Mexico December 12, 1900. Ratifications exchanged at Washington December 24, 1900. Proclaimed December 24, 1900.

16. Convention for the Elimination of the Bancos in the Rio Grande from the Effects of Article 2 of the Convention of November 12, 1884, signed at Washington March 20, 1905, with protocol signed at Washington November 14, 1905. (Treaty Series No. 461; 35 Statutes at Large, 1863-68.) Originals in English and Spanish. Convention submitted to the Senate December 6, 1905. Resolution of advice and consent February 28, 1907. Ratified by the United States March 13, 1907. Ratified by Mexico March 15, 1907. Ratifications exchanged at Washington May 31, 1907. Proclaimed June 5, 1907.

17. Convention Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes, signed at Washington May 21, 1906. (Treaty Series No. 455; 34 Statutes at Large, 2953-56.) Original in English and Spanish. Submitted to the Senate May 22, 1906. Resolution of advice and consent June 26, 1906. Ratified by the United States December 26, 1906. Ratified by Mexico January 5, 1907. Ratifications exchanged at Washington January 16, 1907. Proclaimed January 16, 1907.

18. Convention for the Arbitration of the Chamizal Case, signed at Washington June 24, 1910. (Treaty Series No. 555; 36 Statutes at Large, 2481-86.) Original in English and Spanish. Submitted to the Senate June 25, 1910. Resolution of advice and consent December 12, 1910. Ratified by the United States January 23, 1911. Ratified by Mexico December 27, 1910. Ratifications exchanged at Washington January 24, 1911. Proclaimed January 25, 1911.

19. Supplementary Protocol to the Convention of June 24, 1910, signed at Washington December 5, 1910. (Treaty Series No. 556; 36 Statutes at Large, 2487-88.) Original in English and Spanish. Submitted to the Senate December 7, 1910. Resolution of advice and consent December 12, 1910. Ratified by the United States January 23, 1911. Ratified by Mexico December 27, 1910. Ratifications exchanged at Washington January 24, 1911. Proclaimed January 25, 1911.

20. Convention for the Rectification of the Rio Grande (Rio Bravo del Norte) in the El Paso-Juárez Valley, signed at Mexico City February 1, 1933, with annexes, and with exchanges of notes of February 1 and September 8, 1933. (Treaty Series No. 864; 48 Statutes at Large, 1621-66.) Original convention and annexes in English and Spanish. Convention and annexes submitted to the Senate March 10, 1933. (Message of March 1, 1933.) Resolution of advice and consent, with amendment, April 25, 1933 (legislative day, April 17). Ratified by the United States October 20, 1933. Ratified by Mexico October 6, 1933. Ratifications exchanged at Washington November 10, 1933. Proclaimed November 13, 1933.

## ARTICLE 2

The decision in the case of *Rafael Aguirre v. United States*, rendered by the Umpire of the Commission under the convention between the United States and Mexico of July 4, 1868 (15 Statutes at Large, 679-85), had the effect of dismissing the Indian depredation claims; these were for damages arising from alleged breach of the obligations of the United States under Article 11 of the Treaty of Guadalupe Hidalgo; the number of such claims presented was 366, amounting to \$31,813,053.64% (for the nature of the claims and their adjudication, see Moore, *International Arbitrations*, II, 1305-9; III, 2430-47).

The opening phrase of Article 2 reads:

The government of Mexico hereby releases the United States from all liability on account of the obligations contained in the eleventh article of the treaty of Guadalupe Hidalgo. . . .

El Gobierno de Mexico por este articulo exime al de los Estados Unidos de las obligaciones del articulo once del Tratado de Guadalupe Hidalgo. . . .

Thus the Spanish version for "releases . . . from all liability on account of the obligations", has "exime . . . de las obligaciones".

In the course of his opinion in the cited case, Sir Edward Thornton thus discussed the question of equivalence of the English and Spanish versions of Article 2 (quoted in *ibid.*, 2446-47):

It is alleged that the meaning of the Spanish of the first sentence of the 2d article in question is different from that of the English version. The umpire is not of that opinion. The strict translation of the Spanish would be: "The Government of Mexico by this article exempts that of the United States from the obligations of the 11th article of the treaty of Guadalupe Hidalgo." One of the meanings of the word "liable" found in Johnson's Dictionary is "not exempt." The verb "eximir" may be translated "to relieve from nonexemption or liability". In the 3d article of the unratified treaty of 1853, it is stated that "in consideration of the grants received by the United States and the obligations (*obligaciones*) relinquished by the Mexican Republic" the United States agreed to pay a certain sum of money. In the previous article one of the stipulations was that all occasions of dispute on account of reclamations to that date founded on alleged Indian incursions were removed by the abolition of the 11th article of the treaty of Guadalupe Hidalgo. The term "*obligaciones*" in the beginning of the following article must therefore include those reclamations. There is consequently no reason that they should be excluded from the meaning of the same word in the 2d article of the ratified treaty.

But whether the translation into Spanish was correct or not, it was the Mexican Government alone which was responsible for it. The Spanish version was never submitted to the Senate of the United States, whose sanction to every treaty is necessary. It is true that Mr. Marcy states in his note to Mr. Robles of December 11th, 1856, "that the amendment of the Senate was sent to General Almonte to be translated in advance of the exchange of the ratifications of the treaty." But there is no proof whatever that the translation was sent back to Mr. Marcy, that he was consulted about it, or that he offered any opinion as to its correctness. On the contrary, General Almonte asked on the 4th of May 1854 that the Senate amendments might be sent to him, because he wished to dispatch his mail to Mexico on the following night. On the following day, the 5th, Mr. Marcy forwarded the amendments to General Almonte. There could therefore have been very little time to discuss the correctness of the translation. Nor could there be any object in doing so, for the amendments of the Senate were final, and it was intimated that no modification of them would be admitted by the United States.

General Almonte was known to be a complete master of the English language. He must have well understood, from his knowledge of the language and of the circumstances preceding the conclusion of the treaty, the real meaning of the English of the sentence in question, and the umpire believes that he correctly rendered it into Spanish.

It seems that the history of the Spanish version<sup>1</sup> of the amended treaty was not fully before Sir Edward Thornton. The statement quoted by him from the note of Secretary of State Marcy of December 11, 1856 (printed in Manning, *op. cit.*, IX, 211-15), is neither complete nor accurate.<sup>2</sup>

The Senate resolution containing the proposed amendments was adopted on April 25, 1854; the amendments were set forth in English only. The communication of those amendments to General Almonte by Secretary of State Marcy on May 5, 1854, was not for the purpose of translation, but was, as remarked in the quoted opinion, in order to enable the Minister of Mexico to send them to his Government by that evening's mail. There was at that time no reason whatever for the making of a translation of the amendments either by or for the Department of State; it was then a grave question, which no one in Washington was in a position to answer, whether Santa Anna would accept the treaty as amended; and if the Mexican Government rejected the proposals framed in the Senate, no occasion for their translation would arise.

There is not even any evidence that General Almonte then or at any time translated the amendments; for his own knowledge and comment he needed no Spanish version of them; he certainly sent their text to his own Government in English; and it is not inherently improbable that there was no accompanying translation.

On May 6, Gadsden being in the United States, the amendments were transmitted by the Secretary of State to the Secretary of Legation at Mexico City, John S. Cripps, in two forms, the amendments as such and a running text of the treaty (English version) as amended.

The despatches of Almonte and the instruction to Cripps reached Mexico City during the latter part of May; the wording (in English) of the amendments as transmitted to Cripps was then compared with that received at the Mexican Foreign Office; and, seemingly, this was done by collating running texts of the English as amended.

The decision of Santa Anna to accept the amended treaty made a Spanish version thereof an essential, for inclusion in the Mexican instrument of ratification; that instrument *might* have embodied the text of the signed treaty in the two languages followed by the amendments in the two languages; a simpler form, and the one used, was to include merely a running text of the amended treaty in Spanish and

<sup>1</sup> Six relevant papers are quoted above under the heading "After the Senate Amendments": note of Almonte to Marcy, May 4, 1854; note of Marcy to Almonte, May 5, 1854; instruction to Cripps, May 6, 1854; note of Gadsden to Bonilla, June 6, 1854; note of Marcy to Almonte, June 20, 1854; note of Almonte to Marcy, June 21, 1854.

<sup>2</sup> Other notes of this period discussing Article 2 are from Robles to Marcy of May 27 and July 31, 1856, and February 21, 1857, and from Marcy to Robles of July 9, 1856 (see Manning, *op. cit.*, IX, 834-35, 839-45, 898-901, 206-8).

English; and since Washington was the place fixed for the exchange of ratifications, a special messenger left with the papers for delivery to Almonte, who received them by June 20, and probably a day or so earlier.

On the morning of June 20 Almonte left at the Department of State copies of the English and Spanish versions of the amended treaty; there is no reason to think that any Spanish translation of the amendments was available to the Department of State before this; the English version was examined; "a few verbal inaccuracies" therein were "noted in pencil", and the papers were returned on the same day to Almonte with the request that he make any necessary corresponding alteration in the Spanish and again deliver the papers to the Department as soon as convenient; with a note of Almonte of the next day, June 21, the papers were so delivered in order that their contents might be written into the United States instrument of ratification; and Almonte asked that his copies be sent back to him when this had been done.

So from June 21, eight days before the ratification of the United States and nine days before the exchange, the Spanish version was in the Department of State; it would be unreasonable not to suppose that it was then carefully scrutinized; and if so, one may well believe that the same conclusion regarding the Spanish of Article 2 was arrived at as that stated by Sir Edward Thornton in the first of the three quoted paragraphs of his opinion.

Certainly there is persuasive evidence that the Spanish of the Mexican instrument of ratification was gone over with some care at the Department of State before the exchange. As written at Mexico City the words of Article 1 "de latitud norte: de alli siguiendo dicha paralela de 31°20' " were omitted from that instrument;<sup>1</sup> the proper correction, made by overwriting and interlineation, shows very plainly on the manuscript; and just opposite, in the English of the right column, the phrase "thence along the said parallel of 31°20' " is within a penciled parenthesis, which was doubtless made prior to the correction and in order to call attention to the need of it.

### ARTICLE 3

By Article 3 the Government of the United States agreed to pay to the Government of Mexico, in the city of New York, the sum of \$10,000,000; of this, \$7,000,000 was to be paid upon the exchange of ratifications and the remaining \$3,000,000 "as soon as the boundary line shall be surveyed, marked, and established".

The necessary appropriation act became law on June 29, 1854, providing (10 Statutes at Large, 301):

That the sum of ten millions of dollars be, and the same is hereby, appropriated, out of any money in the treasury not otherwise appropriated, to enable the President of the United States to fulfil the stipulation in the third article of the treaty between the United States and the Mexican Republic, of the thirtieth

<sup>1</sup> Omission of a phrase preceding a repeated word (or as here, figures) is a common scribbling error.

of December, one thousand eight hundred and fifty-three, as subsequently amended by the Senate of the United States; of which said sum of ten millions of dollars, seven millions are to be paid on the exchange of the ratifications of said treaty, and the remaining three millions as soon as the boundary line shall be surveyed, marked, and established.

The payment of \$7,000,000 was "a simultaneous act with" the exchange of ratifications on June 30, 1854 (Marcy to Almonte, February 7, 1855; Manning, *op. cit.*, IX, 178-79).

The balance of \$3,000,000 was, by the treaty, to become due upon the surveying, marking, and establishing of the line<sup>1</sup> by the Commissioners of the two Governments, Major William H. Emory for the United States and José Salazar Ilarregui for Mexico, pursuant to Article 1; necessarily, this could not mean literally "as soon as" the line was so established, but when the fact was officially known at Washington.<sup>2</sup>

On August 16, 1855, the Boundary Commissioners agreed upon four articles, which have been quoted above from Emory Report, 32-33 (also printed in Senate Executive Document No. 57, 34th Congress, 1st session, serial 821, pp. 59-60; hereinafter cited as "serial 821").

On October 15, 1855, the notification mentioned in the third of those articles was delivered at Janos (in northwestern Chihuahua) to Commissioner Salazar by Lieutenant Michler; on the same day the Mexican Commissioner wrote a formal acknowledgment thereof to Commissioner Emory and also officially communicated the fact to the Mexican Minister of Foreign Affairs; and Major Emory, at Washington, on December 18, 1855, communicated to the Secretary of the Interior, Robert McClelland, the letter of Salazar of October 15 (*ibid.*, 61, 64-65; Emory Report, 35-36). With his note of December 10, 1855 (printed below), received December 11, the Mexican Minister at Washington, General Almonte, transmitted to Secretary of State Marcy a copy of a communication of November 19, 1855, received from the Mexican Minister of Foreign Affairs, Mignel M. Arrijoja; its purport was that the Mexican Commissioner, Salazar, had informed his Government under date of October 31 that the work of demarcation had, with the assent of the American Commissioner, been ended, that the new boundary line was consequently established, that the President ad interim of Mexico considered that the conditions precedent to the payment of the \$3,000,000 had been fulfilled, and that Almonte was authorized by the communication to receive the fund (D.S., 8 Notes from the Mexican Legation).

<sup>1</sup> Meaning so much of the boundary as had not been surveyed and established under the Treaty of Guadalupe Hidalgo.

<sup>2</sup> During correspondence evoked by the occupation of Mesilla Valley by forces of the United States from November 15 (or 16), 1854, to February 8, 1855, it was suggested by the Mexican Minister that possession of the territory gave to Mexico "right to demand payment" of the \$3,000,000 (Almonte to Marcy, February 15, 1855; Manning, *op. cit.*, IX, 747-49; for other notes of Almonte on the subject, of January 29, April 7, May 10, and May 17, 1855, see *ibid.*, 742-43, 754, 764-65, 770-71; and for responses of Marcy of February 7, May 14, and May 22, 1855, *ibid.*, 178-79, 182-86, 187-89).

In an opinion of October 29, 1855, Attorney General Caleb Cushing advised that by the agreement of the Commissioners on August 16, 1855, the line was "established", subject only to the postponement involved until receipt of the notification of Article 3 of that agreement, and that the "completion of calculations or preparation of plans" was not in "any way material" (7 Opinions of the Attorneys General, 582-94; serial 821, pp. 21-29);<sup>1</sup> in accord with that opinion, the following proclamation of June 2, 1856, "Respecting the Boundary with Mexico" (11 Statutes at Large, 793-94), was prior in date to the signing of any of the boundary maps; but under the Attorney General's opinion such a proclamation might have issued as early as December 18, 1855:

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

WHEREAS pursuant to the first article of the treaty between the United States and the Mexican Republic, of the thirtieth day of December, one thousand eight hundred and fifty-three, the true limits between the territories of the contracting parties were declared to be as follows:

"Retaining the same dividing line between the two Californias as already defined and established, according to the fifth article of the treaty of Guadalupe Hidalgo, the limits between the two republics shall be as follows:

"Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the fifth article of the treaty of Guadalupe Hidalgo; thence, as defined in the said article, up the middle of that river to the point where the parallel of 31°47' north latitude crosses the same; thence due west one hundred miles; thence south to the parallel of 31°20' north latitude; thence along the said parallel of 31°20' to the 111th meridian of longitude west of Greenwich; thence in a straight line to a point on the Colorado River twenty English miles below the junction of the Gila and Colorado rivers; thence up the middle of the said River Colorado until it intersects the present line between the United States and Mexico:"

And whereas, the said dividing line has been surveyed, marked out, and established, by the respective commissioners of the contracting parties, pursuant to the same article of the said treaty:

Now, therefore, be it known, that I, FRANKLIN PIERCE, President of the United States of America, do hereby declare to all whom it may concern, that the line aforesaid shall be held and considered as the boundary between the United States and the Mexican Republic, and shall be respected as such by the United States and the citizens thereof.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, this second day of [L.S.] June, in the year of our Lord one thousand eight hundred and fifty-six, and of the Independence of the United States the eightieth.

FRANKLIN PIERCE.

BY THE PRESIDENT:

W. L. MARCY, *Secretary of State.*

In the meantime the Government of Mexico had sought to anticipate the payment; by three notes of the Mexican Minister at Wash-

<sup>1</sup> Major Emory thought that Article 1 of the treaty "will not have been fulfilled until the final completion and signature of the plans by both commissioners" (see serial 821, pp. 61-62).

ington, dated January 19, March 24, and August 18, 1855 (D.S., 8 Notes from the Mexican Legation), notice was given of drafts drawn by the Government of Mexico "on account of the three millions of dollars" payable pursuant to Article 3; this is a list of those drafts:

No.	Date	Amount	Payee <sup>1</sup>
149	December 19, 1854.....	\$500, 000	Howland & Aspinwall
150	December 19, 1854.....	500, 000	Howland & Aspinwall
151	December 19, 1854.....	500, 000	Howland & Aspinwall
152	February 23, 1855.....	375, 000	Hargous & Company
153	February 23, 1855.....	375, 000	Hargous & Company
154	July 18, 1855.....	556, 000	Howland & Aspinwall
155	July 18, 1855.....	<sup>2</sup> 100, 000	Howland & Aspinwall

<sup>1</sup> The two drafts of July 18, 1855, were to the order of representatives of Howland & Aspinwall and endorsed over.

<sup>2</sup> This draft of \$100,000 seems to have had its origin in a suggestion of Major Emory for an advance of that amount by the United States in order to put the Mexican Commissioner in funds to carry on the work of demarcation; that suggestion was looked on with favor by Marcy and was communicated to Almonte (D.S., 7 Notes to the Mexican Legation, 21-22, March 20, 1855); the first answer of Almonte was that no advance was required (D.S., 8 Notes from the Mexican Legation, June 4, 1855); but later he wrote from New York that it would be received and that a draft for the amount would be presented by Howland & Aspinwall (*ibid.*, August 2, 1855); to this Hunter, Acting Secretary of State, replied that the President deemed it preferable to make the advance through Major Emory (D.S., 7 Notes to the Mexican Legation, 43-44, August 7, 1855); with this, the question of such an advance ended (the two cited notes of Marcy and the later of the two notes of Almonte are in Manning, *op. cit.*, IX, 182, 190-91, 780-81; all the relevant papers are in serial 821, pp. 6-11, 13-14, 16-18).

The total face value of the drafts was thus \$2,906,000.

The three mentioned notes of Almonte were in rather similar terms; that of January 19, 1855, is as follows (translation; the note of March 24 gave notice of drafts for \$750,000, and that of August 18 of drafts for \$656,000):

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, has the honor to inform the Honorable W. L. Marcy, Secretary of State of the United States of America, that his Government has issued three drafts upon the Treasury of the United States, of five hundred thousand dollars each, under date of the 19th of last month, in favor of Messrs. Howland & Aspinwall, merchants of New York, to be paid when due according to the terms stipulated in the treaty concluded on the 30th of December 1853 between the Mexican Republic and the United States of America.

The undersigned, by order of his Government, has the honor of communicating to the Government of the United States the arrangement alluded to, and avails himself. . . .

The three Mexican notes were acknowledged by Marcy respectively on January 22, March 26, and August 21, 1855 (D.S., 7 Notes to the Mexican Legation, 13-14, 22-23, 47-48), with the statement that he had "transmitted a copy of General Almonte's note to the Secretary of the Treasury for his information" or that he had "informed the Secretary of the Treasury of this transaction"; and translations of the



notes of Almonte were concurrently sent to the Secretary of the Treasury, James Guthrie (see serial 821, pp. 3-4, 12-13, 18-19).

The drafts for \$2,906,000 were negotiated during the regime of Santa Anna, and it was reported that they were disposed of at great discount. The British Chargé d'Affaires at Mexico City, William Garrow Lettsom, wrote that one draft of \$650,000 (presumably the two drafts of July 18, 1855, for \$656,000) was sold for \$250,000 (Garber, 156, citing a despatch of August 2, 1855); and Gadsden, in his lengthy private despatch of June 5, 1855, gave this information and warning to Marcy in advance of the fall of Santa Anna (D.S., 19 Despatches, Mexico; not printed in Manning):

One of the First acts on restoration will be to declare Santa Anna, and his Ministerial Advisers: and stimulators to his abominations Traitors: who have forfeited their Heads to the Republic— Their administration for Two Years during their Military encampment in Mexico will be nullified: and which may possibly even involve the Treaty now in process of execution: if you anticipate the Payment of the Three Millions: or have committed the Government to the Payment of the drafts for Some 2,500000 Dollars: most of which is plunder of this Country— Some of those drafts were purchased at 50 per ct & others at not less than 30. when they ought to have commanded a premium— The average plunder is therefore on that amount is between 900000 and One Million. while the residue 1,500000 has passed into the hands of Contractors: out of which the Nation & People have been swindled of ful 500,000— The Federalists, as officially as they can under their present organization, have notified me: that they protest against the sale of any more domain by Santa Anna: and that they will claim the Three Millions if they get into power before the line is run and marked— The drafts of Santa Anna cannot and ought not to be recognized in advance of the maturity of the Installment— Let them come back protested: On the Drawer: and put your Veto on the 3 millions, either as a reprisal for the indemnity of our own claims: or for the Exiled Government: which Santa Anna would tax for his wrongs— They cannot & will not recognize them as responsibilities on them— They were not parties to the robbery: and let those suffer who joined in the plunder—

A more detailed and circumstantial account of the \$650,000 transaction is in Gadsden's unofficial despatch dated July 11, 1855 (continued on various dates to July 17), from which these passages are excerpted (D.S., 19 Despatches, Mexico; not printed in Manning):

The *Bankers* have committed themselves with Santa Anna: in plundering, in *anticipation*, the Treasury of Mexico of the Three Millions of Dollars; not yet due on the last territorial purchase: and the tribute<sup>1</sup> to the *stability* and *wisdom* of Santa Anna's government: was to justify the Administration for the respect which, it is said has been paid to the drafts presented through the influence of an American House (interested) and those which are to follow, absorbing the last amount— This 650.000 dollars was not negotiated for untill assurances came from the US. that there would be every security in [illegible] arrangement: and this effected: at the moment that the refusal to recognize [any?] drafts: or even note them for payment: I was using with some effect in bringing the issues with this Rule to a happy termination— Every lever that I could apply: has been wrested from my hands by these vigilant or Cormorant Bankers: and mortifyingly so in this last instance as it has been through the agency of American Bankers: who have united in Bonilla's Diplomacy; that my Ministerial bearing & course is personal: not approved of by the President; that I have not his

<sup>1</sup> The reference is to a letter of an American citizen, published at Mexico City, and previously characterized by Gadsden as "written for Wall Street".

Confidence, and that all my recommendations are disregarded— . . . But American Bankers interested in the *fraud* on this Country, as well as on that, I have the honor to represent; and the will to protect her interests; have had the influence to assure Santa Anna that his drafts on the Three Millions will be respected—when by the Treaty, the sum may be at the disposal of the Legitimate Government of Mexico; or justly a subject of *reprisal* for the wrongs inflicted by Santa Anna on Citizens of the U States— Is the Government of the U States to be out diplomatized, and by *its own Bankers*; who have permitted whisperings in this City, that the Representatives of the American Federation, are as approachable as Santa Anna; and his Ministers; and that the American Envoy's *personalities* are well understood in the US to be the obstacles to the harmonious adjustment of all the insults and wrongs of Santa Anna and his deluded Minister— I feel satisfied not— . . .

That you may understand the process by which these frauds are practised: & Santa Anna & Ministers participate, so that in the Books of the Treasury the Transactions may look legitimate you here have a statement of the last negotiation with the 650,000 supposed to be to the Credit of Santa Anna in Washington— The Bankers agree to advance in Cash to Santa Anna 200,000 & pay 450,000 in securities (3 per ct) of the interior funded Debt— The acct in the Treasury looks fair and balanced on the Books— Thus—

By Amt from US.		650.000
To this amt Paid in by NB & C <sup>a</sup> -----	200.000	
To redemption of Public securities-----	450.000	650.000

The Securities are now hawked about in this market at \$5—on the Par 100— with two years interest \$6 due on them The Bankers thus defraud the Treasury of 430,000 dollars which is divided among the Negotiators— If this is not history: the Bankers themselves deceive me: and You may recollect in my early despatches that I had adverted to this fact as among the embarrassments of my early negotiations— The Bankers seeking their agency in negotiations as the only means of accomplishing any thing: as Santa Anna had to be approached in a mode that a minister could not— That it was their vocation, and that no Governmental negotiation was ever Consummated, without the intervention of a Palace Broker— It is pressed upon me daly—

Santa Anna left Mexico City on August 9, 1855, for Veracruz (see circular and decree of August 8, 1855, in Dublan y Lozano, *Legislacion mexicana*, VII, 552-53); at Perote on August 12 he signed a manifesto wherein he announced his abdication; and on August 14 General Martín Carrera was declared Provisional President. On August 12 General Juan Álvarez, leader of the revolutionary movement, wrote from Acapulco to Gadsden asking that the President of the United States "may prevent the delivery of the said three millions to the present administration of Mexico", meaning that of Santa Anna (D.S., 19 Despatches, Mexico, No. 71, September 18, 1855, enclosure; the despatch is endorsed as received on October 2; Manning, *op. cit.*, IX, 785-88). The same question arose that Secretary of State Clayton had envisaged as possible in respect of the payments under the Treaty of Guadalupe Hidalgo when he wrote thus on September 18, 1849 (quoted in vol. 5, pp. 400-404):

According to the article as it now stands, the instalments, with the accruing interest, are to be paid to the Mexican government, in Mexican coin at the City of Mexico. If the administration of President Herrera should be overthrown by one of those revolutions to which Mexico has heretofore been so liable, the government *de facto* at the date when any one of the instalments falls due, will now have a right to expect payment thereof.

Following the brief provisional presidency of General Martín Carrera (from August 14 to September 12) and the holding of the executive power for a short interval by General Rómulo Díaz de la Vega, Álvarez was elected President ad interim, organized his government on October 6, and entered Mexico City on November 15. This note was written by Almonte to Marcy on November 3, 1855 (D.S., 8 Notes from the Mexican Legation, translation):

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, has the honor to communicate to the Honorable W. L. Marcy, Secretary of State, that he has been ordered by his Government to inform the Government of the United States of America that, owing to the careful examination to which the contracts and negotiation of the remaining three millions due to Mexico from the American Government in accordance with the Mesilla Treaty must be subjected, the present Mexican Government has resolved that the drafts drawn by the administration of General Santa Anna on the above-mentioned three millions and against the Treasury of the United States of America, are void and of no effect, and that consequently the undersigned is to receive the said three millions, in conformity with the third article of the treaty signed at Mexico City on the 30th of December 1853.

The undersigned hopes, from the good friendship and good understanding which happily exist between the United States and the Mexican Republic, that the American Government will find no difficulty in complying with the wishes of the Mexican Government, and begs the Secretary of State to lay this note before His Excellency the President and to transmit to him as soon as possible his decision.

Attorney General Caleb Cushing now gave to the Secretary of the Treasury an opinion, dated November 25, 1855, on "the duty of the United States in the premises"; after setting forth the facts, he wrote (7 Opinions of the Attorneys General, 599-601; serial 821, pp. 30-31):

I think the question thus presented is a political rather than a legal one; the more, that the holders of the drafts thus repudiated by the existing administration of the Mexican Republic, are citizens of the United States. It having such paramount political or diplomatic relations, it would be inconvenient, it seems to me, to undertake to decide the matter on the premises of a mere question of law between man and man; and proper that it should be determined as an executive or administrative question, either by yourself, or, in the first instance, by the Secretary of State, by reason of its international character and diplomatic relation to the Mexican Republic.

Marcy's answer of November 29, 1855, to Almonte reads as if some compromise arrangement with the bankers was in mind; his note, after acknowledgment of that of Almonte, contained these paragraphs (D.S., 7 Notes to the Mexican Legation, 53-55; in full in Manning, *op. cit.*, IX, 194-95):

In compliance with the request contained in General Almonte's note, it was laid before the President and has received that careful consideration which the importance of its subject required.

The Undersigned has the honor now to acquaint General Almonte, by direction of the President, that, as the drafts referred to appear to be regular, and as General Almonte in notes dated, respectively, the 19th. January, 24th. March, and 18th. August last, gave official notice of them to this Government, and stated that they were to be paid to the holders upon the fulfilment of the condition prescribed in the Convention of the 30th. December 1853; and, finally, as the event which will require payment of the three millions due under that Convention referred to, is likely soon to occur, the Government of the United States will feel

bound to pay the amount of these drafts to the present holders;—notwithstanding the mere announcement of the existence of objections on the part of the Mexican Government, unless those objections shall be fully stated and should appear valid and conclusive to this Government.

The President desires to take such a course in this matter as will be agreeable to the Mexican Government, provided it be not prejudicial to the legal or equitable rights which the holders of the drafts have acquired. If General Almonte has authority from his Government to make an amicable arrangement of this matter, the Undersigned wishes to confer with him for that purpose.

Almonte had no authority "to make an amicable arrangement of this matter"; he wrote on December 1, 1855 (D.S., 8 Notes from the Mexican Legation, translation; in full in Manning, *op. cit.*, IX, 802-3):

The undersigned, before replying to the contents of the note of the Secretary of State, desires to know whether the drafts referred to were accepted at their due time by the Honorable Secretary of the Treasury, and at what date. As it is important for the undersigned to ascertain this fact, in order to enter into the explanations desired by the Honorable Secretary of State, he trusts that it will be furnished to him as speedily as possible.

Marcy dealt with the question of acceptance of the drafts in this paragraph of his note of December 5 (D.S., 7 Notes to the Mexican Legation, 55-56; in full in Manning, *op. cit.*, IX, 195):

In reply, the Undersigned has the honor to acquaint General Almonte, that the same course was adopted with reference to those drafts, which is always pursued, by every Department of this Government, with regard to drafts not payable at sight. They were not accepted, and solely because it is not the practice of the Government to accept any drafts. When, however, money is due, by the United States, to any party, the draft of that party for the money, is paid when no sufficient cause appears for withholding payment on presentation, even if dated in advance of the period when the money may become due. Under these circumstances, it is not perceived what effect the omission to accept the drafts in question can or should have upon their payment, supposing the period to have arrived when the payment could with propriety be made.

Almonte now set forth the Mexican position in this reasoned note of December 10 (D.S., 8 Notes from the Mexican Legation, translation):

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, has had the honor to receive the note which the Honorable W. L. Marcy, Secretary of State, addressed to him on the 5th instant, in reply to his of the 1st of the same month, in which the undersigned requested the Secretary of State to be pleased to inform him whether the Government of the United States had accepted the drafts that the Mexican Government had drawn upon the Treasury of said United States on account of the three millions that are yet due to Mexico in fulfilment of the Treaty of the Mesilla.

In view of the reply of the Secretary of State, in which he states positively that said drafts have not been accepted (whatever may be the cause), and in consideration of the fact that the undersigned, by order of his Government, gave timely notice to the Government of the United States of its decision that the aforesaid drafts should be annulled, without possibility of any question being raised as to its right to do so (in the same manner that any merchant or individual may cause payment of a draft to be suspended when it may agree with his interests to do so), the undersigned hopes that, the boundary line between the United States and the Mexican Republic having now been marked and settled, as appears from the accompanying copy of a communication,<sup>1</sup> which under date

<sup>1</sup> Cited and summarized above.

of the 19th of last month he has received from his Government, by which the Secretary of State will also see that the undersigned has been empowered to receive the three millions above mentioned, the Government of the United States will proceed, without any further delay, to deliver to him the aforesaid sum, in compliance with the third article of the treaty of the 30th of December 1853.

The undersigned might here bring this note to a close, because, in order to establish his Government's right to be paid, it is sufficient for him to know that the drafts in question have not been accepted by the Government of the United States. But in order that the Secretary of State may see that there are yet other reasons which militate against his assertion that the acceptance of the drafts is not necessary, the undersigned will dwell a little more upon this subject, bringing forward the following considerations.

The practice of not accepting drafts, which the Secretary of State asserts is observed by the Treasury Department, may well be proper so far as its subordinates or other private individuals are concerned, but not with regard to a Government with which positive and binding obligations have been contracted and which is treated on terms of equality. How would it be if, the drafts not having been accepted, they should be presented when due for payment, and the Government of the United States should refuse to pay them? Would there be any reason for exacting payment of the same? Certainly not. The holders of the drafts, actuated, no doubt, by this just fear, have not ceased to exert themselves in order to obtain their acceptance, since the simple presentation of the same to the Secretary of the Treasury did not afford them the security they desired. If what the Secretary of State says were exact, relative to its not being necessary, or what is the same, that it is not customary, for the Secretary of the Treasury to accept drafts, giving to understand that their presentation is sufficient for their being considered as good, the undersigned asks again, would the holders of the aforesaid drafts have exhibited so much anxiety and alarm? Certainly not. If this practice has been so invariably followed, why did the Secretary of State delay nearly the whole of the preceding month in replying to the note of the undersigned of the 3d of last month and in making known to him a practice so common, a thing so simple?

The undersigned would also recall to mind that, when he asked for the three millions in consequence of General Garland having forcibly occupied the Mesilla without waiting for the termination of the labors of the Boundary Commissions, Mr. Marcy, in his reply to the undersigned under date of the 15th [14th] of last May,<sup>1</sup> in refusing the payment of said three millions, did not even make any allusion to the obligation which he now says his Government considers itself to be under, to pay the drafts in question, it so happening that at least two of them, one in favor of the house of Mr. Aspinwall and the other in favor of the house of Hargous, had been presented in the preceding months of January and March, and the amount of which is nothing less than two million two hundred and fifty thousand dollars (\$2,250,000).<sup>2</sup> Accordingly, if the practice that the Honorable Secretary of State mentions had been so constantly followed, it certainly could not have escaped his penetration at the time to which the undersigned refers, and it would have been applied to these drafts, which are the same as those of that period, and in this manner the wishes of the Mexican Government would have been satisfied then and the just resentment which the improper occupation of the Mesilla caused it to feel would to a certain degree have been conciliated.

But the Secretary of State says that the Government of the United States may sometimes find itself obliged not to pay drafts that are presented to it, when there are objections which it considers valid. The undersigned thinks that there can be no greater objection nor impropriety to pay these drafts, which have not been accepted, than the fact that the utterer or drawer of said drafts himself has said, in due and proper time, that they were without effect. This is precisely what the Government of the undersigned has done, which Government is the legitimate owner of the money in question, of which the Government of the United States cannot dispose without attacking the just rights of Mexico.

<sup>1</sup> This correspondence has been cited above.

<sup>2</sup> These were the first five of the seven drafts above listed.

With regard to the causes which the Mexican Government may have for directing that the aforesaid drafts be without effect, the undersigned cannot persuade himself that the Honorable Secretary of State seriously asks that these causes should be explained to his Government, for it is clear that such pretension would tend to attack the sovereignty of the Mexican nation, which is free and independent and therefore has no account to give to anyone of its domestic administration. Should there be any persons who consider themselves aggrieved, or who have any complaint against the Government of the undersigned, they are at full liberty to state these complaints before the said Government, or before the tribunals of the Republic, where the same will be heard and taken into consideration; but to claim that the Mexican Government should submit its acts to the approval of the Government of the United States seems to the undersigned to be a pretension so inconsiderate and so foreign to the good understanding which happily exists between the two nations that he cannot comprehend how it could have found a place in the councils of the American Government.

Under these circumstances the undersigned hopes, from the impartiality no less than from the consideration which is due to a friendly nation, that the Government of the United States will not insist on paying drafts which, although previously drawn by the Mexican Government, have subsequently been declared invalid by the same Government, this having been done before the time within which said drafts ought to have been paid. But if, notwithstanding this declaration, the American Government should insist in making said payments, the undersigned hereby protests, in the name of his Government, for that contingency, in the most solemn manner, against such step; and he likewise declares that his Government will have a right to claim, at any time, the three million dollars which, in virtue of the third article of the treaty of the 30th of December 1853, the American Government was pledged to pay to it as soon as the boundary line was established, besides losses and damages.

The undersigned entreats the Honorable W. L. Marcy to be pleased to acknowledge the receipt of this note, and on this occasion has the honor. . . .

In his next note, of January 8, 1856, which follows, Marcy confessed "the very great embarrassment" of this Government and refrained from arguing the question of right (D.S., 7 Notes to the Mexican Legation, 57-59):

The Undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of General Almonte, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, of the 10th. ultimo, in relation to the payment of its drafts on the Treasury of the United States drawn by Mexico on account of the three millions of dollars due, and to be paid, pursuant to the Convention of the 30<sup>th</sup> Decr 1853.

In reply, the Undersigned has the honor to acquaint General Almonte, that, as the drafts referred to are nearly all in favor of citizens of the United States,<sup>1</sup> and as this Government has been formally and officially requested by the Mexican Government itself to pay them, very serious embarrassments are thereby presented in the way of making a different disposition of the three millions from that before directed by Mexico. General Almonte's protest against the payment of the drafts is not founded on any objection to their validity, nor is it denied that the Mexican Government had made direct application to the Government of the United States to apply the money, when payable, to these drafts.

Under these circumstances, General Almonte cannot but be sensible of the very great embarrassment in which this Government is placed by that of Mexico.

Were the transaction between individuals, there could be no question as to the course which equity and justice would require. By the drafts, the fund on which they were drawn would be considered as appropriated to the bona fide holders of them, and the payment to the owner of the fund, after that owner had requested the Depository to apply it to the drafts, would not exonerate the Depository from liability to pay the drafts.

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<sup>1</sup> Since two concerns held all the drafts, this must mean that nearly all the financial interest in them was American owned.

With a decided disposition to conform to the wishes of Mexico in the transaction, in case it can be done in good faith to the holders of the drafts,—this Government must ask that of Mexico to remove the difficulty which it has created by causing the claim of the holders of the drafts to be withdrawn. As soon as this is done, or Mexico will show that the drafts are invalid, or for any good reason ought not to be paid, the United States will most readily comply with General Almonte's request to pay the \$3,000,000 to him, as the authorized agent of the Mexican Republic, when the contingency on which payment depended shall have happened. As Mexico has created the embarrassment which prevents this Government from complying with the request of General Almonte, she will perceive the reasonableness of the expectation of this Government that she should remove it.

The diplomatic discussion ended with this note of Almonte of January 21, 1856 (D.S., 8 Notes from the Mexican Legation, translation):

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the Mexican Republic, has had the honor to receive the note which the Honorable W. L. Marcy, Secretary of State, was pleased to address to him on the 8th instant in reply to that which he addressed to him on the 10th of last month relative to the payment of the three millions still due to Mexico according to the Treaty of the Mesilla.

As the Honorable Mr. Marcy has taken no notice of the reasons that the undersigned had the honor of submitting to him in his aforesaid note of the 10th of last month, in virtue of which the Mexican Government had thought proper to alter its determination in regard to the payment of the drafts that it had previously drawn on the said three millions (which drafts were not accepted, according to the statement of the said Secretary of State), the undersigned finds himself under the necessity of repeating now all that he had the honor of stating to the Secretary of State in the aforesaid note, adding that the American Government has no right to pay to any person the money which, by the treaty of the 30th of December 1853, it must deliver to the Mexican Government only.

The undersigned, nevertheless, in deference to the wishes of the Government of the Honorable Secretary of State, will this very day transmit to the Government of Mexico a copy of the note of Mr. Marcy, in order that it may determine in due time what it may deem proper, and on this occasion has the honor. . . .

On dates which were approximately concurrent with the notes of the Mexican Minister of January 19, March 24, and August 18, 1855, the two banking firms had formally notified both the Secretary of State and the Secretary of the Treasury of their holdings of the drafts and of their claims thereunder (see serial 821, pp. 4-6, 15-16, 19-21, 66-73); after objection made by the Mexican Government (note of November 3, 1855, printed above) to payment of the drafts, there were naturally further communications from the bankers, though (*semble*) none to them in writing; and the papers submitted by the bankers were very regular on their face; they included receipts from the Mexican Treasury for the face amounts of the drafts, and, in respect of the Howland & Aspinwall drafts for \$1,500,000, a report by the Secretary of the Treasury of Mexico that the contract was for a discount of 5 percent (*ibid.*, 37-47, 49-50, 72).

By note of February 5, 1856, Almonte, by order of the Mexican Government, requested payment of the Hargous drafts for \$750,000 and the two later Howland & Aspinwall drafts for \$656,000, in all, \$1,406,000; and by note of March 19, 1856, the Mexican Chargé d'Affaires ad interim, Angel de Iturbide, similarly requested payment

of the Howland & Aspinwall drafts for \$1,500,000, and also that "the whole remainder of the aforesaid three millions" (\$94,000) be paid to that firm (D.S., 8 Notes from the Mexican Legation; the note of March 19 is in Manning, *op. cit.*, IX, 825-26); to this last note Marcy answered the next day that payment of the drafts in question had been directed but that it was "deemed advisable to postpone the payment of the balance of the amount which will then be due to Mexico until after a draft or drafts therefor in the usual form shall have been presented to this government" (D.S., 7 Notes to the Mexican Legation, 68; Manning, *op. cit.*, IX, 202-3). Pursuant to those requests, directions for payment at the Treasury were given by Marcy; the drafts for \$656,000 were paid on February 7; those for \$750,000 on February 9; and those for \$1,500,000 on March 20; the balance of \$94,000 was paid to Howland & Aspinwall on April 4, 1856, the requirement of a draft for that amount having been waived (see serial 821, pp. 50-53, 74-76).

Obviously, the story of the drafts is told only in part in the papers sent to the Senate with the presidential message of April 14, 1856, in response to a requesting resolution of the previous March 20 (serial 821); the diplomatic correspondence is among the papers transmitted; but the despatches of Gadsden concerning the drafts were not at any time communicated to either House of Congress.

There can be little doubt that the withdrawal of the Mexican objections to payment of the drafts was the result of arrangements between the Mexican Government and the bankers. Gadsden wrote on December 5, 1855, that the bankers had "agreed to compromise on some 5 or 600,000 Dollars with the Government for the recognition" (Manning, *op. cit.*, IX, 806; see also *ibid.*, 814, December 19, 1855). It seems likely that this compromise was only in respect of the four drafts for \$1,406,000; for as late as January 23, 1856, Howland & Aspinwall wrote to Marcy asking payment of their drafts for \$1,500,000, stating that the Government of Mexico had "been endeavoring to extort from our Agents in the City of Mexico, a large sum of money as the price for withdrawing the protest", and adding their belief "that our own Government will not, by longer withholding what is justly due, force such an alternative upon us" (D.S., Miscellaneous Letters, January 1855, misfiled; printed in serial 821, pp. 49-50). It is relevant in this connection to observe that the official request of Mexico for the payment of the Howland & Aspinwall drafts for \$1,500,000 was not made until some six weeks after the similar request in respect of the other drafts.

Gadsden denounced the transaction of the drafts in unmeasured terms; he called it "one of the greatest frauds, which history has ever recorded" (Manning, *op. cit.*, IX, 805, December 5, 1855; and see his remark to the British Chargé d'Affaires at Mexico City, quoted in Garber, 173). Gadsden's first opinion was that the \$3,000,000 should be paid to the Government of Álvarez<sup>1</sup> (Manning, *op. cit.*, IX, 788, September 18, 1855); and he continued to regard this as a proper policy (*ibid.*, 799, November 25, 1855; 805, December 5, 1855;

<sup>1</sup> Ignacio Comonfort became Substitute President on December 8, 1855.



819, January 18, 1856). At the same time, however, he suggested that payment be withheld because of the Mexican contention that the Indian depredation claims under Article 11 of the Treaty of Guadalupe Hidalgo were not extinguished by Article 2 of the Gadsden Treaty (*ibid.*, 806, December 5, 1855).

On the subject of the drafts nothing was written to Gadsden by Marcy until this instruction of February 4, 1856, one day before the request of the Government of Mexico for the payment of drafts for \$1,406,000 (D.S., 17 Instructions, Mexico, 64-68):

As early as December 1854 the Mexican government raised money mostly from American citizens, pledging for the repayment thereof the remaining \$3,000,000, which would be payable to it by the United States, under the Treaty of the 30th of December, 1853, when the boundary line referred to in that Treaty should be established. For the money thus advanced the Mexican government drew drafts on this Government, and gave notice through its Minister here, that the drafts were drawn on that fund, and requested them to be paid out of it. When the time approached for the payment of the \$3,000,000, this Government was surprised by a notice from General Almonte, the Mexican Minister here, that his Government countermanded the payment of the drafts and demanded that the \$3,000,000 should be paid directly to itself. The Mexican government, though called on for that purpose, has not shown any reason—or scarcely a pretext for such a change of purpose. The validity of the drafts has not been questioned; that they were drawn on the fund in possession of the United States is not denied; and that this Government had been requested by that of Mexico to pay these drafts when the \$3,000,000 should become payable, is not controverted. Had this been a transaction between private persons, I can hardly conceive how there could have been a difference of opinion as to the proper course to be pursued by the holder of the fund. The drafts would have been considered as an equitable appropriation of that fund to the amount of them in the hands of the fund-holder.

The Government of Mexico had a perfect right to raise money on this fund by pledging it, and it is quite common for Governments to anticipate their revenue or income by loans in that way. I herewith send you a copy of the correspondence between this Government and the Mexican Minister—General Almonte, by which you will see the views of both parties on the subject.

After having raised money from our citizens to a large amount on the pledge of the \$3,000,000, it is difficult to see how Mexico can justify her attempt to withdraw the fund thus pledged from the holders of the drafts, or how the United States can give effect to this attempt without being a party to an injury to their own Citizens. I indulge the hope that if this case is strongly put to the Mexican government, it will see the propriety of withdrawing the objection to the payments of the drafts which it has requested this Government to pay.

The President directs you to bring this matter before the Government of Mexico, and if not able to induce it to withdraw the protest against the payment of the drafts, you are instructed to ask it to furnish the reasons which, in its judgment, justify the protests against the payment of them. You will perceive, as no doubt the Mexican Government will, the propriety of the request of this Government to be furnished with these reasons. As the case now stands, it is obvious that the Mexican Government by raising money on the pledge of the \$3,000,000, giving the lenders drafts on that sum in possession of the United States, and requesting them to pay the drafts, has created duties on the part of the United States towards the holders of those drafts. If there be substantial reasons for the protest, it is important that these reasons should be known to the United States that they may offer them in opposition to the claims of the holders of the drafts to be paid by the United States. What would justify Mexico in protesting against the payment of the drafts would be an answer to the demand on the United States to pay them. If she cannot justify the protest, the United States would find it exceedingly difficult to dispose of the claims to the holders of the drafts—Mexico having requested the drafts to be paid out of the \$3,000,000. Mexico having created the embarrassments in which this government is placed

will, undoubtedly, feel herself bound to remove them. This Government is desirous to conform in this matter to the wishes of Mexico, and will do so as soon as Mexico has removed the obstacle which she herself has created.

Your despatches to N<sup>o</sup> 82, inclusive, are received.

Regarding the foregoing instruction it is to be said that if there was a "pledge" of the fund or an "equitable appropriation" thereof, it was surely relevant to ascertain the actual amount of the advances made by the payees of the drafts, the pledgees; no such inquiry was suggested, despite what Gadsden had written in his private despatch of the previous June 5 (quoted in part above); it is indeed very strange that Marcy makes no mention whatever of Gadsden's communications. Moreover, the "perfect right" of the Government of Mexico to anticipate the fund was, at least, doubtful; it may well be argued that the wording of Article 4, which was written in the Senate, was deliberately chosen and intended to exclude the privilege of assignment or anticipation. Only six years earlier the Senate had changed the wording of Article 12 of the Treaty of Guadalupe Hidalgo so as to make non-negotiable, instead of negotiable, the obligation of the United States for the instalment payments to be made under that instrument (see vol. 5, pp. 243-44; and for the dissimilar views of Buchanan and Clayton on the question of anticipation, 256, 384, 402-3); and, realistically, if the right of the Government of Mexico to assign or pledge the fund was clear, it would not have been necessary to dispose of short term obligations of the United States for half their face.

Gadsden replied with scathing criticism of the course and policy of the Pierce administration; his despatches (in part) of April 5 and 18, 1856, follow (D.S., 19 Despatches, Mexico, Nos. 87 and 88):

[No. 87, April 5, 1856, excerpts]

In Dispatch N<sup>o</sup> 86. was acknowledged the receipt of Dispatch N<sup>o</sup> 60. and which is the only communication from the State Department which has reached this Mission, since 58 of the date of November last<sup>1</sup>— Most of the Dispatches from Mexico: in this long interruption of correspondence from the U States; and which had become frequent, lengthy and important; on the part of this Legation; at a Crisis in the transition affairs in this quarter; which seemed to impose them; related to the subject of the Dispatch now recognized; and would have been found to contain much if not all of the information at this late hour sought— A Careful perusal of those official communications; with much which was made known in private confidence; would have relieved from the disturbing embarrassments; which Gen<sup>l</sup> Almontes, just protests against the payment of the drafts: predicated on the 3 million indemnity by Santa Anna; seems to have produced

I have studiously examined the Dispatch and the voluminous correspondence: between the Mexican Minister: and the Department of State; and am much at a loss, to comprehend the object or motive of the Presidents instructions to this Legation; "to bring this matter before the Government of Mexico; and if not able "to induce to withdraw the protest against the payment of the drafts; to ask

<sup>1</sup> There is some confusion here; Gadsden's despatch No. 86, of March 12, 1856, acknowledged the receipt of instruction No. 58, of November 13, 1855; this despatch, No. 87, acknowledges the receipt of "Dispatch N<sup>o</sup> 60", which is the instruction of Marcy of February 4, 1856, quoted above, and is throughout so referred to by Gadsden.

“it to furnish reasons, which in its judgement justify the protest against the “payment of them”;— When those reasons had been enlarged on in Genl Almontes communications accompanying the protest; and might have been more forcible and convincing; but for the antecedant relations of that highly respected Envoy; with a Military Usurper; who on the eve of his abandonment (unable to maintain, his Camp at the Capital; had placed his signature to the greatest fraud, he had ever inflicted on a humiliated and betrayed nation— If Citizens of the United States; were principals or Partisipants in this Transaction; as is to be inferred from Dispatch 60—it only adds to the mortification; and responsibility; which *similar interferences* with Negotiations in Mexico; This Legation felt the obligation; on a former occasion, to expose; and remonstrate against; while it has enhanced the sympathy on its part, for a *Country* and a *Cause*; in the humiliation and plunder of which; even “American Money Changers” are now recognized to be in undisguised, and protected alliance— I am the more embarrassed therefore “to perceive, as I have no doubt the Mexican Government will, the “propriety of the request, through this Legation, to be furnished with these “reasons”—as the period for their being of any *value* or *force* has been permitted to pass by; and the obligations which the Secretary of State now affirms imposed on his Government; to protect drafts on time, predicated on foreign “Contracts and negotiations” which the Mexican Minister claimed in behalf of his Government the right to revise and examine; *had been disclaimed on the part of This Legation*—as will be seen in detail in Dispatches 76-78 and 80.<sup>1</sup>— Had Dispatch 60: with the Mexican Ministers Correspondence, been furnished at an earlier date; it would have been received as a response to the voluminous correspondence on the subject of the Mexican Government’s Protests against the Santa Anna Treasury Fraud; (one of which had at a very early date been forwarded through this Legation; and would have relieved the American Minister: from a Committal on a protestation against any obligation, the President felt imposed: or “duties created” to protect and demand payment; in behalf of the holders of the protested: or withdrawn drafts— This obligation on the Executive of the U States: I had emphatically repudiated; and am unable now, to comprehend how the Law Officer, of the Government, could have come to that conviction

It appears however from Dispatch and Correspondence 60—That these obligations; which the Envoy of the U States; in his simplicity on international morality, had repudiated; were made known through other channels: and with alleged authority “as duties created” on the part of the President of the U States to “demand of Mexico”—the recognition, and the honoring of Drafts; which had been arraigned by the Opposing Sovereignty; as fraudently obtained from the Treasury—and which had the designed influence: of *forcing* from fear of further and more threatening issues between the two neighbouring Republics, than those which at present exist; A withdrawal of the Protest; and a reluctant recognition of the payment from the Messila Indemnity; against which those valuations had been declared as illegally predicated— This submission, was accomplished, as had been previously intimated to the Department, through secret and concealed Agencies; Spiritual Rappers in the dark; purporting to represent with more *fidelity* and *truth* the views and determination of the Government at Washington, than its accredited, and *unadvised* Envoy, as to the *views* and *Responsibilities* now acknowledged as imposed on the Executive at Washington— The word *force*, is not inapplicable on this occasion; as it is known to this Legation that the Existing Government of Mexico did not acquiese voluntarily or convincingly in the respect claimed for the drafts: but rather yielded reluctantly; in their recognized weakness: amid continued internal discords: all of which were availed of by the same Instruments: to heighten distrust: under the alarm of the Consequences of continuing the Protest— The New Government, had come into power; with the most favourable dispositions towards that of the U States; and most anxious to cultivate kindred neighbourhood relations with it— The most potent opposition which it had to encounter, in its struggles to reclaim its inheritance, was from the monied power, concentrated in the vaults of a few Foreign money changers; and who through Brokers, of the same instincts; could at any time invoke the Elishas Cloak: in the prostituted American Flag; for a Cover—

<sup>1</sup> Respectively of November 17, December 5, and December 19, 1855; for excerpts therefrom, see Manning, *op. cit.*, IX, 795-97 803-6, 814.

These Salamancas, as in Spain; ruled and humbled Mexico by impoverishment and Robbery— They held the Mastery over Santa Anna: and his Army, through his debasing private instincts: and always public exigencies— They shared in his last supposed inheritance, from the Appropriations of Mesilla—in order that the New Government should fall heir to a bankrupted Nation: and thus become the more facile instruments in their power for future subjugation, and spoil— They were not favourable to the re-assumption of *self Government*: in Mexico; because it would be American; opposed to all those Monopolies; protections and prohibitions, on which they had been so long revelling: and they recognized in the Incoming Sovereignty as Liberal in its views: that it would have the sympathy of its nearest neighbour— The Chiefs of Ayutla: in success; had therefore relied with confidence: on the Government of the U States: being gratified with the opportunity of saving to Mexico, a small moiety of the sum which was to be paid in the consideration of a new reduction of its Terretorial domains—and could not for a moment entertain the opinion: that that Friend, on whose sympathies it had reposed; could except to a protest: against that moiety being distributed, among irresponsible and private spoilers; and who were preparing to use that spoil: in *stimulating new Emules to falsify the Revolution achieved*— Responding to these feelings; and more than just views: on our supposed relations with Mexico; and in the absence of all intellegence; or communications: in reply to frequent and importunate dispatches on this subject to the Department; there was no responsibility transcended, on the part of this Legation, in echoing Sentiments: in which it was in sympathy: however embarrassing may be the advise at so late hour; that adverse opinions were held by the President: and his Legal Counsellors— The Secretary of State must perceive therefore, that while the Envoy of the U States: deeply regrets the dissentient opinions of the President: on a subject which seems to have occasioned so much embarrassment at Washington He cannot in justice to the integrity of his Mission; so impair its influence on the relations which it has been his study to promote with Mexico; as to reprove his own course; not taken, but under *mature judgement of events and of history*, at this Capital: as “to exert an opposite influence”: without the Argument: so as “to induce this Government to withdraw its protest, against the payment of justly repudiated Drafts;” to ignore its sovereignty in this humiliation; and to ask, after it has from influences, adverted to above: been *forced* to this humiliation; “to furnish the reasons which in its judgement justify “the protest against the payment of them”— If however the Secretary of State still deems it important however, to place on the record of Mexican Diplomacy “the reasons which in the judgement of the Mexican Government; justified the “protest against the payment” of the Santa Anna Treasury Drafts; predicated on the Masilla indemnity; This Legation will read to the Minister Despatch 60: and furnish him with a Copy if he desires; and leave it optional with him, to reaffirm, with adenda which had been omitted; the views conveyed by Gen<sup>l</sup> Almonte: in justification of the protest: he had been instructed to file— The Secretary of State however may anticipate such a response, from A Minister who has been made to feel, and suffer from the responsibility of withdrawing the protest; can only be made in a spirit of subdued complaint: on the part of an insulted weak sovereignty; encompassed by Enemies: and by none more active and vindictive than the holders of drafts: from absconding; abdicating usurpation;—and which they had been forced to honor; through the threatened superior power: of a Sovereignty they had relied on as a Protector and Friend— No Mr Marcy— Be assured and I say it with all Candor and truth—that if the Policy of the Administration at Washington be the fulfilment of the Mission of the U States; in all its relations to the Other Legitimate self and independent Sovereignities of the Americas: and this Envoy, has recognized no other Monitor; a greater than a mistake; a *Political fault* has been committed: in the whole proceedings towards Mexico in relation to the favored illegitimate appropriations by Santa Anna; on the last installment of the Messila purchase; and of those of the Senate; with the concurrence of the Executive; on the mutilation of the Original Treaty by which that Territory was acquired— It reopened all the issues which had been quieted in the provisions of that Convention: It left the legitimate claims of honest suffering Citizens of the U States to be readjusted hereafter; and under auspices far less propitious than those which influenced that

settlement: It gave pretensions to Santa Anna: to appropriate to himself: what was intended for the relinquishment of the 11 Article of Hidalgo Gaudalupe; and by that act declaring that those obligations still remain binding on the U States—and it has impaired the influence of Your Envoy, in a constructive reproof: of his having misrepresented His Government; and while it has stimulated the interference of private Individuals in international negotiations: it has encouraged the same interpositions; always antagonistical and in Conflict: with the higher public interests and principles; which it is the obligation of the Envoy, and of the government he represents; to cherish and protect— The exposure, and at an earlier date; of private intrusion on the negotiations of this Legation: and through an unexplained Mission: who proved an instrument of the Parties: instead of An Agent of the Government; it was hoped would have been a reproof deterring from similar interferences: with the obligations and responsibilities of This Mission— But Dispatch 60, in the shield of protection, extended: would seem to have emboldened: these Intrusions in public matters; made subservient to private speculation; in renewed essays to involve the Two Governments in issues, exclusively domestic, & not National— If they have not prevented; they has postponed adjustments: which were under favourable progress; of all the disagreements between the Two Governments; and now threaten to add to the docket of just Complaints and grievances—an extended list of new and illegitimate issues;—superceding the first—

No spirit of Complaint have influenced the views here expressed— They have been stimulated by a strong sense of obligation to the responsibilities devolved on the Position of Envoy in Mexico— If the President thinks that I have faltered in the performance: or have not in fidelity fulfilled; the obligation to recall; and replace, by one who can act conscientiously, and more in accordance with opposing views: rests with the appointing power: and cannot impose the responsibility of asking for a recall; which may involve imputations of private Considerations— There is a justification; and under severe trials, of the fidelity with which, I have fulfilled the high trusts to which called: tempered possibly with a little too much zeal; and with the peculiar notion, that an American Representative abroad; is not a Member of a Diplomatic Corps; governed by the obsolete rules of diplomacy, and of Ceremonies: but an Exponent of the Ideas and Promises; of the *Institutions* and the *Law* to which he has made a public pledge—and that he is amenable to the Same Tribunal: of a Higher and Coordinate Functionary; though to Him, he may owe the nomination to the position called upon to Fill—

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[No. 88, April 18, 1856, excerpt]

Such have been the interceptions: and interruptions; in the Correspondence between this Capital and the U States: that I have deemed it important to forward by this mail a duplicate of N<sup>o</sup> 87, as the matter therein entertained: is calculated to impair the relations: between the two Countries; for which this Legation; after its previous correspondence; cannot hold itself responsible— Had the Secretary of State, left the adjustment of the 3 millions indemnity; in *conformity* to the *stipulations* of the *Treaty*: to this Legation (and which had some Agency in the negotiation), with the Legitimate Government entitled to it; the American Envoy; might have escaped from the Continued and new threatning issues: which previous confidence, in his professions to the Incoming Government; had prepared the path to harmony— The action at Washington however; on that Case as an *American Claim*; and without any advise to this Mission; who had imbibed and acted under opposing views; has left it in a false, and embarrassed position; from which future explanations can alone extricate it— This mistified Diplomacy: corresponds so much with interpositions; through a Confidential Agent, on a former occasion; with the obligations of this Legation; that the Envoy in justice to the integrity of the high trusts reposed in him: feels constrained; however reluctantly to enter his solemn protest; that he may not be held responsible for a failure of Expectations on a Mission he was called upon to fulfill— The issues

between the two Governments are multiplying daily: and have been encouraged by the shield of protection which has been extended to a great fraud, on Mexico;— Other foreign claims have invoked the protection of this Legation as assimilated to; and as corresponding in all their relations to those, which have been favored; and most signally imposed on this subdued Country, by the power of the United States; while the legitimate, and higher protracted claims of Citizens of the U States: are left to the adjustment of a Mission *weakened* in all its influences by a Department: on which it had confidently relied for endorsement; and support—

While in Washington Gadsden was notified of his recall on June 30, 1856 (Manning, *op. cit.*, IX, 205); he returned to Mexico City and continued in exercise of his official functions until the arrival of his successor, John Forsyth, of Alabama (who had been appointed on July 21, 1856), in the following October. Various reasons have been assigned for the recall of Gadsden; his strained relations with Marcy may have been one of them (see Garber, 177-78).

#### ARTICLE 8

Article 8 of the Gadsden Treaty was terminated by the treaty signed at Washington April 13, 1937 (Treaty Series No. 932; 52 Statutes at Large, 1457-59), which went into effect on December 21, 1937, when the ratifications were exchanged at Washington.

In his message of April 22, 1937, submitting the treaty to the Senate, President Roosevelt wrote:

In keeping with my policy of the good neighbor in the relations of the United States with the governments of the other American republics, I agreed to a request made by the Mexican Government that article VIII of the treaty between the United States and Mexico signed on December 30, 1853, and commonly known as the Gadsden Treaty, be terminated by treaty; and to this end I invested the Secretary of State with plenary power to negotiate, conclude, and sign a treaty between the United States and the United Mexican States for that purpose.

The treaty terminating article VIII of the treaty of December 30, 1853, was signed by the Secretary of State and the Mexican Ambassador at Washington on April 13, 1937, and I transmit it herewith to the Senate.

Article VIII of the treaty of 1853, while of potential value at the time it was negotiated, has never operated and has no present-day use, since the work contemplated in its first paragraph was undertaken and completed by Mexico without the assistance of the United States, and transportation between the eastern and western parts of the United States is now better served by trans-continental means of transportation across the United States or by the Panama Canal than it can be served across the Isthmus of Tehuantepec to which the right was granted by article VIII of the Gadsden Treaty.

I ask the advice and consent of the Senate to ratification of the treaty of April 13, 1937, herewith transmitted.

The termination of article VIII of the treaty of December 30, 1853, will not affect any other provisions of that treaty, and they will remain in full force and effect.

A press release of the Department of State of December 21, 1937, included the following (Press Releases, XVII, No. 430, pp. 510-11):

So far as the Department of State is informed, the provisions of the terminated article had never been operative, and subsequent development of other established

means of communication between the Atlantic and Pacific coasts of the United States, made them obsolete.

The other provisions of the Gadsden Treaty are not affected by the termination of article VIII, and they remain in full force.

#### AMERICAN CLAIMS AGAINST MEXICO

In a report to the Senate dated June 30, 1852, Secretary of State Webster wrote this (Senate Executive Document No. 95, 32d Congress, 1st session, serial 621, p. 2):

It is of great importance that the claims of American citizens against foreign governments, in behalf of which the interposition of this government is required, should be more thoroughly examined and more thoroughly understood than may be expected from the exparte statements of the claimants, inasmuch as the honor of the government requires that its interposition be given in no case not apparently founded in law and justice.

That the Department of State some months later had insufficient knowledge regarding American claims against Mexico and endeavored (fruitlessly) to become more fully informed is shown by this final paragraph of the instruction of October 14, 1852 (in part in Manning, *op. cit.*, IX, 121-25), from Acting Secretary of State Conrad to Alfred Conkling, Minister to Mexico (D.S., 16 Instructions, Mexico, 339-51):

With a view to enable this Department to form some estimate of the amount of the claims of citizens of the United States against Mexico growing out of wrongs committed by that government, or its agents you will please, at your earliest leisure, to examine them respectively, and to give your opinion as to their justice, and state the amount for which you consider them respectively well founded.

Because of uncertainty as to the extent of American claims against Mexico, Secretary of State Marcy was unwilling for the United States to assume them all; his instructions to Gadsden of July 15, 1853, were indefinite on the subject; the instructions of October 22, 1853, would have limited the release of American claims to those "arising under any articles of the Treaty of Guadalupe Hidalgo"; further explanation of his views is found in the instruction of December 22, 1853; such of the American claims as arose under the Treaty of Guadalupe Hidalgo Marcy was prepared to release and have paid by the American Treasury; without some understanding with the claimants under the Garay Grant "as to what would be accepted by them" he wrote that the Government "is unwilling to assume the payment of it"; and the other claims, "independent of those arising under the Treaty" of Guadalupe Hidalgo, he thought "are not sufficiently known to make it a matter of prudence for this government to assume them, or to hazard the success of the negotiation by reserving a sum to cover the liability which would be incurred by the general assumption of them" (Manning, *op. cit.*, IX, 151; not received at Mexico City before the signing of the Gadsden Treaty).

However, in Articles 3 and 4 of the signed treaty were clauses whereby the United States assumed "all the claims of their Citizens . . . which may have arisen" since the signature of the Treaty of Guadalupe Hidalgo, undertook to satisfy the same to the extent of \$5,000,000,

and exonerated Mexico therefrom; the amendments proposed by President Pierce would have limited the released and assumed claims to those arising "under treaty or the law of nations" (substantially two of Marcy's three categories); the Senate Committee on Foreign Relations would have excepted from that limitation the claim of the holders of the Garay Grant, although with words excluding "anticipated profits". Before the Senate voted on the claims clauses there was before that body the Marcy report of March 29 (printed above), from which these paragraphs are again quoted:

The accompanying list of claims of the citizens of the United States against Mexico includes, it is believed, all which have been brought to the notice of the Department, and the origin of them, so far as the papers on file disclose that fact.

The statement has been made out from the documents presented by the complaining parties. Many of them are unsustained by proof, and some so imperfectly stated as scarcely to disclose the true motive of the acts complained of. On the other hand, several of the more important claims are accompanied with very voluminous documents which it would be necessary to examine critically in order to ascertain precisely the character of the claims. Those described in the accompanying statement as claims "for seizure of goods", "excess of duties", &c, are of this nature. Many of the documents are in Spanish of which no translations have been furnished, or, as yet, made at the Department. To make translations of them would require much time and labor.

There are, undoubtedly, a number of claims by our citizens presented to our Legation at Mexico, of which no account is found in this Department.

The list of claims which accompanied Marcy's report was this (D.S., 7 Report Book, 60-62):

List of unadjusted claims of citizens of the United States  
against the Republic of Mexico.

	Name of Claimant.	Ground of Claim.	Amount.
1	F. Peters.....	for seizure of schooner Anna Maria at Vera Cruz, 1848....	\$15,000 00
2	John Ehlers.....	seizure of tobacco at Durango, violation of 19 <sup>th</sup> Art. of Treaty.....	20,000 00
3	John Dusenbury.....	Durango, Embargo of his goods and stoppage of his business..	20,000 00
4	Howard & Sons' Line of Steamers	for seizure of part of the Cargo of Ship Manlin at Acapulco...	20,000 00
5	Wilkinson & Montgomery	for the seizure of goods in Camargo, in Nov. 1849.....	80,000 00
6	P. N. Paillet.....	for overpaid duties at Tabasco in 1850.....	5,000 00
7	F. Labrere.....	for do in Tampico.....	10,000 00
8	T. Labrere.....	for seizure of Tobacco at Tampico, violation of 19 Art.....	100,000 00
9	G. Lacarde.....	for seizure of Ser. L. M. Hitchcock at Lobos Island.....	40,000 00
10	Washington Kerr.....	for seizure of Tobacco at Durango—19 Art.....	100,000 00
11	Do.....	for seizure of Madapoallans.....	40,000 00
12	John Parrott.....	for detention & loss on tobacco, 19 Art.....	70,000 00



	Name of Claimant.	Ground of Claim.	Amount.
13	John Parrott.....	for Mules abandoned at Guadalupe y Calvo.....	\$150,000 00
14	J. A. Lynch.....	seizure of furniture at Matamoras.....	5,000 00
15	S. A. Belden & Co....	Matamoras, Tobacco claim violation of 19 Art.....	150,000 00
16	Estate of C. Carroll...	murdered near Linares in July, 1848.....	150,000 00
17	Robert B. Kingsbury ..	Tobacco in Monterey, violation of 19 Art.....	25,000 00
18	Baker & Grayson.....	Do.....	10,000 00
19	John Ehlers & Co.....	Matamoras..... Do.....	30,000 00
20	P. C. Shannon.....	Do..... Do.....	30,000 00
21	F. Maxan.....	" Business broken up.....	35,000 00
22	F. Maxan.....	" Tobacco, 19 <sup>th</sup> Art.....	30,000 00
23	M. Surgeneau <sup>1</sup> .....	Do..... Do.....	5,000 00
24	Jose Costellto.....	Tampico "....."	100,000 00
25	J. Keynolan <sup>2</sup> .....	Vera Cruz "....."	30,000 00
26	V. Galoso.....	New Orleans, seizure of goods in Jalapa, 19 <sup>th</sup> Art.....	80,000. 00
27	Julius Merle.....	Vera Cruz, Mexican courts reversed decision of U.S. Military Courts & gave back property he had purchased under judgement & execution.....	10,000 00
28	Oscar Robert.....	seizure of goods & breaking up of business in Tampico, imprisonment &c.....	100,000 00
29	Lionel Moses.....	Vera Cruz, seizure of good and arbitrary fines, breaking up his business.....	100,000. 00
30	Joseph Moses.....	Seizure of goods.....	100,000. 00
31	Carlos Butterfield and E. Huntington	Destruction of cargo of provisions at Tabasco.....	11,000. 00
32	Maxwell.....	Denegation of Justice.....	10,000. 00
33	Hixon & O. Boyle.....	Metamoras, seizure of goods and ruin of business, 19 Art.....	30,000 00
34	N. Brewer.....	seizure of goods, 19 Art.....	50,000 00
35	W. R. Glover.....	seizure of specie & ruin of business.....	125,000 00
36	Turges of Durango....	Plunder of the estate of Cucien deceased & denegation of justice.....	2,300,000 00
37	James Selkirk.....	Seizure of the "Helen Mar".....	5,000 00
38	F. Bronner.....	Illegal exaction of duties.....	46,717. 15
39	A. Speyer.....	seizure of cash.....	1,000 00
40	Procter Lyons.....	seizure of goods.....	50,000 00
41	Jos. Moses.....	Damages to business.....	10,000 00
42	F. W. Rice.....	Imprisonment.....	50,000 00
43	B. & F. Lament.....	Property purchased & price seized without delivery of property.....	26,000 00
44	Jose M. Toscano.....	Appropriation of his property.....	1,088 00
45	W. A. Wyse.....	services rendered to Mexico.....	7,781 00
46	Tyler, Milner & Jones	seizure of gold dust.....	3,208 00
47	Assignees of Garay....	Breach of Contract.....	5,283,000 00

<sup>1</sup> "Suzeneau" is written in pencil above this name.

<sup>2</sup> "Reynolds" is written in pencil above this name.

	Name of Claimant.	Ground of Claim.	Amount.
48	W. H. Aspinwall.....	seizure of funds of Pacific Mail Steamship Co.....	\$45,350 70
49	Mellheny.....	Imprisonment.....	Not Stated.
50	A. Blumenkren.....	Denial of justice.....	Do
51	S. V. R. Ryan.....	Imprisonment.....	"
52	Heirs of Com. Porter..	Value of grant of land.....	"
53	James Magee.....	Imprisonment & losses.....	119,375 00
54	D. A. Ogle.....	Personal injuries & losses.....	Not Stated.
55	W. S. Parrott.....	Failure of Mex. Gov. furnish proof of claim under Treaty of Guadalupe Hidalgo.....	" "
			<sup>1</sup> \$9,444,519.85

<sup>1</sup> The correct total is \$9,834,519.85.

In view of Marcy's observations and figures it is perhaps not surprising that the Senate voted unanimously to delete all clauses of the treaty regarding American claims; so the treaty which went into force was silent as to claims against Mexico for the period from February 2, 1848, to December 30, 1853, which, according to the signed treaty, would have been adjudicated and paid.

Gadsden seems to have thought that "legitimate & urgent private claims" (i.e., excluding that of Hargous and associates under the Garay Grant) might come to \$3,000,000 (see Manning, *op. cit.*, IX, 668, November 20, 1853); in 1857 Secretary of State Cass proposed a convention which would have reserved \$2,000,000 for claims "not founded on contract", the balance, if any, after adjudication, to be paid to Mexico (see *ibid.*, 237); but no one in 1853-54 had the data requisite for a fair estimate.

One group of claims existing in 1853 comprised those arising under Article 19 of the Treaty of Guadalupe Hidalgo; it is said that these were eighteen in number, "amounting to almost a million dollars", fourteen of which were tobacco claims (Rippy, 43); but the amount given is from the "exparte statements of the claimants"; and the unreliability of such statements may be instanced by a few tobacco and other cases.

One of the tobacco claims was that of S. A. Belden & Company; in the Marcy list it figures at \$150,000; the case had been the subject of a Senate committee report in 1852; in the proceedings before the Commission under the convention of July 4, 1868, the principal of the claim was adjudicated at \$23,154.56 (see Moore, *International Arbitrations*, IV, 3808-13, quoting the Senate committee report); the claim had been filed with the Commission at \$314,684.12 (Senate Executive Document No. 31, 44th Congress, 2d session, serial 1720, pp. 24-25, case No. 131). Another tobacco case in the Marcy list is that of Washington Kerr for \$100,000; this claim was dismissed by the Commission (*ibid.*, case No. 153). Two other claims listed by Marcy are those of John Parrott for \$220,000; in the proceedings mentioned they were dismissed (*ibid.*, 22-23, cases Nos. 103 and 104;

Moore, *op. cit.*, 3808). Francis W. Rice claimed \$50,000; in 1872 he was awarded \$4,000, without interest (*ibid.*, 3248-49; case No. 7 before the Commission).

Agreement between the United States and Mexico for the settlement of claims subsequent to the Treaty of Guadalupe Hidalgo was made by the convention of July 4, 1868 (15 Statutes at Large, 679-85). Events leading up to that convention and proceedings had thereunder are narrated in Moore, *International Arbitrations*, II, 1287-1358 (and for references to discussion of particular cases, see the index in *ibid.*, V, 5182-84).

Under the 1868 convention, claims for a period of twenty-one years were adjudicated, from February 2, 1848, to February 1, 1869 (*ibid.*, II, 1352). Claims against Mexico numbered 1,017, and awards were made in 186 cases (*ibid.*, 1313-14); the great sum of \$470,126,613.40<sup>1</sup> is given as the aggregate of the claims of citizens of the United States; but there were many American claims for unstated amounts which are beyond that total; the awards were \$4,125,622.20,<sup>2</sup> including interest at 6 percent to July 31, 1876, in those cases in which interest was allowed (*ibid.*, 1319); in numerous cases the interest awarded was more than the principal.

The claim for \$5,283,000 made by the Hargous interests under the Garay Grant, whatever its worth, if any, had been filed in the Department of State in 1852; the famous case of the Pious Fund, adjudicated under the 1868 convention (see *ibid.*, 1348-52) and again in 1902 (see *American Journal of International Law*, II, 893-902), was not officially known in 1854. Apart from those two cases, and taking as a correct and inclusive basis the awards made under the convention of July 4, 1868, the aggregate amount of valid American claims against Mexico existing at the date of the Gadsden Treaty did not exceed \$210,000.<sup>3</sup>

<sup>1</sup> This included one claim for \$322,907,519.33, which, with interest, came to the fantastic amount of \$546,315,038.66 (see Moore, *op. cit.*, III, 3132-33). Even if this claim is not taken into account, the awards were less than 3 percent of the total of the claims for stated amounts.

<sup>2</sup> Somewhat less in United States money. More than three fourths (in amount) of the awards were expressed in Mexican gold coin, the dollar of which was agreed to be equivalent to 98.3939 cents of the gold dollar of the United States (Moore, *op. cit.*, II, 1321-22); the difference is nearly \$53,000; and awards for over \$400,000 were in United States currency. Moreover, two awards totaling \$1,170,852 Mexican gold were later found to be of fraudulent origin (see *ibid.*, 1324-48; *La Abra Silver Mining Company v. United States*, 175 U.S. 423-500; *United States v. Alice Weil et al.*, 35 Court of Claims Reports, 42-89). Regarding those two claims, see also R. Earl McClendon, "The Weil and La Abra Claims against Mexico", in *Hispanic American Historical Review*, XIX, 31-54.

<sup>3</sup> Apart from the case of the Pious Fund, not more than nineteen awards were made by the Commission under the 1868 convention on claims based, in whole or in part, on events of 1853 or earlier; the aggregate of those nineteen awards is \$419,976.43 (see the list of American claims in serial 1720, docket Nos. 7, 8, 24, 70, 83, 113, 115, 125, 131, 143, 145, 165, 178a, 178b, 183, 197, 442, 479, 607); and it is reasonable to estimate that more than half of that amount was for interest accruing after 1854.

