

PORTUGAL.

PORTUGAL, 1840.

Aug. 26, 1840.

TREATY OF COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND HER MAJESTY THE QUEEN OF PORTUGAL, CONCLUDED AT LISBON AUGUST 26, 1840; RATIFICATION ADVISED BY SENATE FEBRUARY 3, 1841; RATIFIED BY PRESIDENT APRIL 23, 1841; RATIFICATIONS EXCHANGED AT WASHINGTON APRIL 23, 1841; PROCLAIMED APRIL 24, 1841.

Treaty with Portugal.

In the Name of the Most Holy and Undivided Trinity.

Contracting parties.

The United States of America and Her Most Faithful Majesty the Queen of Portugal and of the Algarves, equally animated with the desire of maintaining the relations of good understanding which have hitherto so happily subsisted between their respective States; of extending, also, and consolidating the commercial intercourse between them; and convinced that this object cannot better be accomplished than by adopting the system of an entire freedom of navigation, and a perfect reciprocity based upon principles of equity equally beneficial to both countries; have, in consequence, agreed to enter into negotiations for the conclusion of a treaty of commerce and navigation; and they have appointed as their Plenipotentiaries for that purpose, to wit:

Negotiators.

The President of the United States of America, Edward Kavan[a]gh, their Chargé d'Affaires at the Court of Her Most Faithful Majesty; and Her Most Faithful Majesty, the most illustrious and most excellent John Baptist de Almeida Garrett, First Historiographer to her said Majesty, of her Council, Member of the Cortes, Knight of the ancient and most noble Order of the Tower and [d] Sword, Knight Commander of the Order of Christ, Officer of the Order of Leopold in Belgium, Judge of the Superior Court of Commerce, Envoy Extraordinary and Minister Plenipotentiary to Her Catholic Majesty;

Who, after having exchanged their respective full powers, found to be in due and proper form, have agreed upon and concluded the following articles:

ARTICLE I.

Reciprocal liberty of commerce and navigation.

There shall be, between the territories of the high contracting parties, a reciprocal liberty of commerce and navigation. The citizens and subjects of their respective States shall, mutually, have liberty to enter the ports, places, and rivers of the territories of each party, wherever foreign commerce is or shall be permitted. They shall be at liberty to sojourn and reside in all parts of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing, and particularly to the regulations in force concerning commerce.

ARTICLE II.

Vessels upon equal footing.

Vessels of the United States of America arriving, either laden or in ballast, in the ports of the Kingdom and possessions of Portugal; and, reciprocally, Portuguese vessels arriving, either laden or in ballast, in the ports of the United States of America, shall be treated, on their entrance, during their stay, and at their departure, upon the

same footing as national vessels, coming from the same place, with respect to the duties of tonnage, light-house duties, pilotage, port charges, as well as to the fees and perquisites of public officers, and all other duties and charges, of whatever kind or denomination, levied upon vessels of commerce, in the name or to the profit of the Government, the local authorities, or of any public or private establishment, whatsoever.

ARTICLE III.

No higher or other duties shall be imposed on the importation into the Kingdom and possessions of Portugal of any article the growth, produce, or manufacture of the United States of America; and no higher or other duties shall be imposed on the importation into the United States of America of any article the growth, produce, or manufacture of the Kingdom and possessions of Portugal, than such as are or shall be payable on the like article being the growth, produce, or manufacture of any other foreign country.

Equality of duties on products of either country.

Nor shall any prohibition be imposed on the importation or exportation of any article the growth, produce, or manufacture of the United States of America, or of the Kingdom and possessions of Portugal, to or from the ports of the said Kingdom and possessions of Portugal, or of the said States, which shall not equally extend to all other foreign nations.

Equality of prohibitions.

Nor shall any higher or other duties or charges be imposed, in either of the two countries, on the exportation of any articles to the United States of America, or to the Kingdom of Portugal, respectively, than such as are payable on the exportation of the like articles to any other foreign country.

Exportations.

Provided, however, that nothing contained in this article shall be understood, or intended, to interfere with the stipulation entered into by the United States of America, for a special equivalent, in regard to French wines, in the convention made by the said States and France, on the fourth day of July, in the year of our Lord one thousand eight hundred and thirty-one; which stipulation will expire, and cease to have effect, in the month of February, in the year of our Lord one thousand eight hundred and forty-two.

[See convention of 1831 with France, pp. 245-247.]

ARTICLE IV.

The same duties shall be paid, and the same bounties, deductions, or privileges allowed, on the importation into the Kingdom and Possessions of Portugal, of any article the growth, produce, or manufacture of the United States of America, whether such importation shall be in vessels of the said States, or in Portuguese vessels; and, reciprocally, the same duties shall be paid, and the same bounties, deductions, or privileges allowed, on the importation into the United States of America, of any article the growth, produce, or manufacture of the Kingdom and possessions of Portugal, whether such importation shall be in Portuguese vessels, or in vessels of the said States.

Importations in vessels of either party.

ARTICLE V.

It is agreed by the high contracting parties that, whenever there may be lawfully imported into all or any of the ports of the Kingdom and possessions of Portugal, in vessels of any foreign country, articles of the growth, produce, or manufacture of a country other than that to which the importing vessels shall belong, the same privilege shall immediately become common to vessels of the United States of America, with all the same rights and favors as may, in that respect, be granted to the most favored nation. And, reciprocally, in consideration thereof, Portuguese vessels shall thereafter enjoy, in the same respect, privileges, rights, and favors, to a correspondent extent, in the ports of the United States of America.

Importations in vessels of other countries.

ARTICLE VI.

Duties on ex-
portations.

All kinds of merchandise and articles of commerce, which may be lawfully exported or re-exported from the ports of either of the high contracting parties to any foreign country, in national vessels, may also be exported or re-exported therefrom in vessels of the other party, respectively, without paying other or higher duties or charges, of whatever kind or denomination, than if the same merchandise or articles of commerce were exported or re-exported in national vessels.

Bounties, draw-
backs, &c.

And the same bounties and drawbacks shall be allowed, whether such exportation or re-exportation be made in vessels of the one party or the other.

ARTICLE VII.

Coasting trade.

It is expressly understood that nothing contained in this treaty shall be applicable to the coastwise navigation of either of the two countries, which each of the high contracting parties reserves exclusively to itself.

ARTICLE VIII.

Stipulations not
applicable to cer-
tain ports.

It is mutually understood that the foregoing stipulations do not apply to ports and territories, in the Kingdom and possessions of Portugal, where foreign commerce and navigation are not admitted; and that the commerce and navigation of Portugal directly to and from the United States of America and the said ports and territories are also prohibited.

When ports to be
opened to United
States.

But Her Most Faithful Majesty agrees that, as soon as the said ports and territories, or any of them, shall be opened to the commerce or navigation of any foreign nation, they shall, from that moment, be also opened to the commerce and navigation of the United States of America, with the same privileges, rights, and favors as may be allowed to the most favored nation, gratuitously, if the concession was gratuitously made, or on allowing the same compensation or an equivalent if the concession was conditional.

ARTICLE IX.

Vessels seeking
refuge.

Whenever the citizens or subjects of either of the contracting parties shall be forced to seek refuge or asylum in any of the rivers, bays, ports, or territories of the other, with their vessels, whether merchant or of war, through stress of weather, pursuit of pirates or enemies, they shall be received and treated with humanity, giving to them all favor, facility, and protection for repairing their ships, procuring provisions, and placing themselves in a situation to continue their voyage, without obstacle or hindrance of any kind.

ARTICLE X.

Consular officers.

The two contracting parties shall have the liberty of having, each in the ports of the other, Consuls, Vice-Consuls, Agents, and Commissaries of their own appointment, who shall enjoy the same privileges and powers as those of the most favored nation. But before any Consul, Vice-Consul, Agent, or Commissary shall act as such, he shall, in the usual form, be approved and admitted by the Government to which he is sent.

Exequaturs.

But, if any such Consuls shall exercise commerce, they shall be submitted to the same laws and usages to which the private individuals of their nation are submitted, in the same place, in respect of their commercial transactions.

And it is hereby declared that, in case of offense against the laws, such Consul, Vice-Consul, Agent, or Commissary may either be punished according to law or be sent back, the offended Government assigning to the other reasons for the same.

The archives and papers of the consulates shall be respected inviolably; and under no pretext whatever shall any magistrate seize or in any way interfere with them. Inviolability of archives.

The Consuls, Vice-Consuls, and Commercial Agents shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captains should disturb the order or the tranquillity or offend the laws of the country, or the said Consuls, Vice-Consuls, or Commercial Agents should require their assistance to cause their decisions to be carried into effect or supported. Settlement of disputes between masters and crews.

It is, however, understood that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authorities of their country.

ARTICLE XI.

The said Consuls, Vice-Consuls, and Commercial Agents are authorized to require the assistance of the local authorities for the search, arrest, detention, and imprisonment of the deserters from the ships of war and merchant-vessels of their country. Deserters from vessels.

For this purpose they shall apply to the competent tribunals, judges, and officers, and shall in writing demand the said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews, or by any other official documents, that such individuals formed part of the crews; and this reclamation being thus substantiated, the surrender shall be made without delay.

Such deserters, when arrested, shall be placed at the disposal of the said Consuls, Vice-Consuls, or Commercial Agents, and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be detained until the time when they shall be restored to the vessels to which they belonged, or sent back to their own country by a vessel of the same nation, or any other vessel whatsoever. But, if not sent back within four months from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause. However, if the deserter shall be found to have committed any crime or offense, the surrender may be delayed until the tribunal before which his case shall be pending shall have pronounced its sentence, and such sentence shall have been carried into effect.

ARTICLE XII.

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

And where, on the death of any person holding real estate within the territories of one of the high contracting parties, such real estate would, by the laws of the land, descend on a citizen or subject of the other party, who, by reason of alienage, may be incapable of holding it, he shall be allowed the time fixed by the laws of the country; and, in case the laws of the country actually in force may not have fixed any such time, he then shall be allowed a reasonable time to sell or otherwise dispose of such real estate, and to withdraw and export the proceeds without molestation, and without paying to the profit of the respective Heirs to real estate.

Governments any other dues than those to which the inhabitants of the country wherein said real estate is situated shall be subject to pay in like cases.

ARTICLE XIII.

Favors granted
to other nations to
become common.

If either party shall hereafter grant to any other nation any particular favor in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation or an equivalent, *quam proximè*, where the grant is conditional.

ARTICLE XIV.

The United States of America and Her Most Faithful Majesty, desiring to make as durable as circumstances will permit, the relations which are to be established between the two parties, by virtue of this treaty or general convention of reciprocal liberty of commerce and navigation, have declared solemnly and do agree to the following points:

Duration of
treaty.

1st. The present treaty shall be in force for six years from the date hereof, and further until the end of one year after either of the contracting parties shall have given notice to the other of its intention to terminate the same; each of the contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said term of six years; and it is hereby agreed between them that, on the expiration of one year after such notice shall have been received by either from the other party, this treaty shall altogether cease and terminate.

Infringement of
treaty.

2d. If any one or more of the citizens or subjects of either party shall infringe any of the articles of this treaty, such citizen or subject shall be held personally responsible for the same; and the harmony and good correspondence between the two nations shall not be interrupted thereby; each party engaging in no way to protect the offender, or sanction such violation.

Reprisals and
declarations of
war.

3d. If, (which, indeed, cannot be expected,) unfortunately, any of the articles contained in the present treaty shall be violated or infringed in any way whatever, it is expressly stipulated, that neither of the contracting parties will order or authorise any acts of reprisal, nor declare war against the other, on complaints of injuries or damages, until the said party considering itself offended shall first have presented to the other a statement of such injuries or damages, verified by competent proof, and demanded justice and satisfaction, and the same shall have been either refused or unreasonably delayed.

Ratifications.

4th. The present treaty shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate of the said States, and by Her Most Faithful Majesty, with the previous consent of the General Cortes of the nation, and the ratifications shall be exchanged, in the city of Washington, within eight months from the date hereof, or sooner if possible.

Signatures.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Date.

Done in triplicate in the city of Lisbon, the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and forty.

EDWARD KAVANAGH.

JOÃO BAPTISTA DE ALMEIDA GARRETT.

[L. S.]
[L. S.]

PORTUGAL, 1851.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND HER MAJESTY THE QUEEN OF PORTUGAL RELATIVE TO CLAIMS OF AMERICAN CITIZENS. CONCLUDED AT WASHINGTON FEBRUARY 26, 1851; RATIFICATION ADVISED BY SENATE MARCH 7, 1851; RATIFIED BY PRESIDENT MARCH 10, 1851; RATIFICATIONS EXCHANGED AT LISBON JUNE 23, 1851; PROCLAIMED SEPTEMBER 1, 1851.

Feb. 26, 1851.

The United States of America and Her Most Faithful Majesty the Queen of Portugal and of the Algarves, equally animated with the desire to maintain the relations of harmony and amity which have always existed, and which it is desirable to preserve between the two Powers, having agreed to terminate by a convention the pending questions between their respective Governments in relation to certain pecuniary claims of American citizens presented by the Government of the United States against the Government of Portugal, have appointed as their Plenipotentiaries for that purpose, to wit:

Contracting parties.

The President of the United States of America, Daniel Webster, Secretary of State of said United States, and Her Most Faithful Majesty, J. C. de Figanière é Morão, of Her Council, Knight Commander of the Orders of Christ and of O. L. of Conception of Villa Viçosa, and Minister Resident of Portugal near the Government of the United States;

Negotiators.

Who, after having exchanged their respective full powers, found to be in due and proper form, have agreed upon and concluded the following articles:

ARTICLE I.

Her Most Faithful Majesty the Queen of Portugal and of the Algarves, appreciating the difficulty of the two Governments agreeing upon the subject of said claims, from the difference of opinion entertained by them respectively, which difficulty might hazard the continuance of the good understanding now prevailing between them, and resolved to maintain the same unimpaired, has assented to pay to the Government of the United States a sum equivalent to the indemnities claimed for several American citizens, (with the exception of that mentioned in the fourth article,) and which sum the Government of the United States undertakes to receive in full satisfaction of said claims, except as aforesaid, and to distribute the same among the claimants.

Payment to the United States in full of claims.

ARTICLE II.

The high contracting parties, not being able to come to an agreement upon the question of public law involved in the case of the American privateer brig "General Armstrong," destroyed by British vessels in the waters of the island of Fayal, in September, 1814, Her Most Faithful Majesty has proposed, and the United States of America have consented, that the claim presented by the American Government, in behalf of the captain, officers, and crew of the said privateer, should be submitted to the arbitrament of a sovereign, potentate, or chief of some nation in amity with both the high contracting parties.

Case of the brig "General Armstrong" to be submitted to arbitration.

ARTICLE III.

So soon as the consent of the sovereign, potentate, or chief of some friendly nation, who shall be chosen by the two high contracting parties, shall have been obtained to act as arbiter in the aforesaid case of the privateer brig "General Armstrong," copies of all correspondence which has passed in reference to said claim between the two Governments and their respective representatives shall be laid before the arbiter, to whose decision the two high contracting parties hereby bind themselves to submit.

Papers to be laid before-arbiter.

Decision to be final.

ARTICLE IV.

Sum to be paid
for other claims.

The pecuniary indemnities which Her Most Faithful Majesty promises to pay, or cause to be paid, for all the claims presented previous to the 6th day of July, 1850, in behalf of American citizens, by the Government of the United States, (with the exception of that of the "General Armstrong,") are fixed at ninety-one thousand seven hundred and twenty-seven dollars, in accordance with the correspondence between the two Governments.

ARTICLE V.

Payment, how
made.

The payment of the sum stipulated in the preceding article shall be made in Lisbon, in ten equal instalments, in the course of five years, to the properly-authorized agent of the United States. The first instalment of nine thousand one hundred and seventy-two dollars seventy cents, with interest as hereinafter provided, (or its equivalent in Portuguese current money,) shall be paid, as aforesaid, on the 30th day of September of the current year of 1851, or earlier, at the option of the Portuguese Government; and at the end of every subsequent six months a like instalment shall be paid—the integral sum of ninety-one thousand seven hundred and twenty-seven dollars, or its equivalent, thus to be satisfied on or before the thirtieth day of September, 1856.

ARTICLE VI.

Interest.

It is hereby agreed that each and all of the said instalments are to bear, and to be paid with an interest of six per cent. per annum, from the date of the exchange of the ratifications of the present convention.

ARTICLE VII.

Ratifications.

This convention shall be approved and ratified, and the ratifications shall be exchanged in the city of Lisbon within four months after the date hereof, or sooner if possible.

Signatures.

In testimony whereof the respective Plenipotentiaries have signed the same, and affixed thereto the seals of their arms.

Date.

Done in the city of Washington, D. C., the twenty-sixth day of February, of the year of our Lord one thousand eight hundred and fifty-one.

DAN'L WEBSTER.

J. C. DE FIGANIÈRE E MORÃO. [L. S.]