NICARAGUA, COSTA RICA, AND SALVADOR.

PROTECTION OF DANISH INTERESTS IN SALVADOR BY UNITED STATES OFFICIALS.

Mr. Hay to Mr. Merry.

No. 425.]

DEPARTMENT OF STATE, Washington, October 25, 1901.

SIR: Referring to the Department's Nos. 470 and 535, dated, respectively, July 3, 1896, and February 6, 1897, relative to protection of Chinese subjects in Nicaragua and Salvador by the representatives of the United States in those countries, I inclose a translation of a note from the Danish minister at Washington explaining that his Government has no representatives in Salvador, and asking that under the circumstances the protection of the United States be extended to Danish subjects and interests in that country.

Your efforts are to be confined to the friendly intervention in case of need for the protection of Danish subjects in their person and property from unjust and harsh treatment. You are not to hold any representative character or function as respects the Danish Government and are to act informally. Before taking any steps in the matter, however, you should represent to the Government of Salvador the wish of the Danish Government and the willingness of your Government to accede thereto, as herein indicated, provided the assent of the authorities of Salvador is entirely favorable.

Its decision upon the subject should be reported to the Department.

I am, etc.

JOHN HAY.

Mr. Hay to Mr. Merry.

No. 429.]

DEPARTMENT OF STATE, Washington, December 10, 1901.

SIR: Referring to instruction No. 425, of October 25 last, I inclose herewith for your information a copy of a note from the Danish minister stating that his Government will issue a notice to Danish subjects in Salvador that they have been placed under the protection of the United States as soon as it is informed that the Salvadoran Government assents to such protection.

I am, etc.,

JOHN HAY.

Mr. Merry to Mr. Hay.

No. 691.]

LEGATION OF THE UNITED STATES, San Jose, February 20, 1902.

SIR: I have the honor to forward herewith the reply of the Government of El Salvador to your request as per your No. 425 of October

---

a See Foreign Relations, 1897, p. 425.
b See Foreign Relations, 1897, p. 426.
c See under Denmark, p. 365.
d Printed, p. 366.
25 and No. 429 of December 10, 1901, that Danish subjects in that Republic may be accorded the protection of the United States Government under the same restrictions applicable to the subjects of the Chinese Empire.

You will note that the Government of El Salvador concedes this request. I respectfully await your instructions to so advise our consular officers in that Republic.

With assurances, etc.,

WILLIAM LAWRENCE MERRY

[Inclosure—Translation.]

Mr. Trigueros to Mr. Merry.

DEPARTMENT OF FOREIGN RELATIONS,
San Salvador, February 10, 1902.

SIR: The consul-general of the United States in this Republic has informed me in a note of January 28 last that the minister of Denmark in Washington has requested the Government of the United States to obtain from my Government the necessary authority for the diplomatic representative of the Government of your excellency to grant his official protection to the Danish subjects residing in the Republic.

In reply it is my duty to inform your excellency that my Government has no objection to conferring that authorization in order that the diplomatic representatives of the Government of the United States may exercise their good offices in favor of the Danish subjects, with the same restrictions and in the same form that it is permitted them to use their good offices respecting the subjects of the Chinese Empire.

I am pleased, etc.,

JOSÉ TRIGUEROS.

Mr. Hay to Mr. Merry.

No. 457.

DEPARTMENT OF STATE,
Washington, March 7, 1902.

SIR: I have the honor to acknowledge the receipt of your No. 691 of the 20th ultimo, with inclosure from the Salvadoran minister of foreign affairs, from which it appears that the Government of Salvador has no objection to the exercise of your good offices and those of our consular officers in Salvador in favor of Danish subjects, with the same restrictions and in the same form as their exercise is permitted respecting Chinese subjects.

You state that you will await the Department's instructions before advising the consular officers in Salvador.

The Department's instructions in regard to the use of good offices in favor of Chinese subjects are contained in its No. 470, a of July 3, 1896, and No. 525 b of February 6, 1897, to your predecessor, Mr. Lewis Baker. As regards Danish subjects you will be guided by these instructions and that to you numbered 425 c of October 25, 1901. You will instruct the United States consular officers in Salvador to act in accordance therewith.

I inclose for your information copy of a note d which I have this day addressed to the Danish minister on the subject.

I am, etc.

JOHN HAY.

a See Foreign Relations, 1897, p. 425.

b See Foreign Relations, 1897, p. 426.

c Printed, ante.

d Printed, under Denmark.
ARBrrATION OF CLAIMS OF THE SALVADOR COMMERCIAL
COMPANY ET AL. v. SALVADOR.

The Secretary of State.

Sir: The following report, in the form of a draft instruction and
accompanying memorandum, in the case of the Salvador Commercial
Company v. Salvador is respectfully submitted.

W. L. Penfield, Solicitor.

[Inclosure.]

Draft of instruction to United States minister to Salvador.

Sir: I gladly avail myself of this opportunity to express the gratification with
which the Government of the United States has observed the kindly feeling and
unfailing courtesy shown by the Government of Salvador throughout its elaborate
discussion of the claim of the Salvador Commercial Company.

It also affords me unfeigned pleasure to express the sincere desire of the Govern-
ment of the United States to cultivate and strengthen the cordial relations which
have long and happily existed between the two Republics. Constantly animated by
a high sense of justice, the Government of the United States is incapable of con-
sciously lending itself to the commission of an act of injustice either toward its own
nationals or those of other States; far less could it do so toward another friendly
State. It entirely shares the views of the Salvadoran Government that the ques-
tion at issue between the two Governments is simply a question of right, and one
which should be determined by the principles of equity, sanctioned by the con-
science of all good men. This has been the sole criterion of its judgment; and such
being its constant motive, it has no opinion to offer on the language quoted in the
first counter-memorandum from the writings of the distinguished publicist, Mr.
Charles Calvo, containing charges by the distinguished author of wrongful inter-
ventions of European States with those of South and Central America for the collection
of indemnities.

If it were necessary to defend the high sense of honor which uniformly governs its
own conduct in analogous cases, the Government of the United States is not wanting
in ample precedents to vindicate its title to a foremost place among the nations in
its respect for justice between nation and nation as between man and man. It might
refer to the restitution to Japan of an indemnity which it collected in the sum of
$785,000; to China, of an indemnity collected in the sum of $453,400.90; to Brazil,
of an indemnity collected in the sum of $96,406.73, which had been wrongfully
obtained on misinformaiton of the facts; and to the restitution recently made to the
Republic of Mexico of $690,863.85 American gold. Other instances might be cited.
Some of these moneys were refunded in the light of a better information and under-
standing of the facts, even after their payment to this Government on award made
in pursuance of international arbitration; after a full hearing of all the evidence and
arguments on both sides.

In the light of these high precedents and of the frequent displays of its magna-
nimity and of its justice, and of the numerous and striking proofs it has given of its
strong and sincere friendship to the States of Central and South America, the refer-
ence to the cited text of Calvo would seem to be inappropriate to this discussion. That
the Government of the United States should consciously do an unjust act toward any
individual or any State is an impossible conception. Its vast resources and great
power have, in its conception, no measure of value in comparison with the principles
of justice, by the vindication of which and by the constant display of kind and frater-
nal feeling would it seek to win its true position among nations. There is never
on its part danger of the conscious abuse of power; yet I am aware that there is
always danger of the abuse of conscious power; and ever watchful against such sub-
tle influence and in the effort to maintain the equal poles of the balance, the conclu-
sion reached, from a most careful and laborious study of all the correspondence and
evidence submitted on either side in this case, and especially of the oral arguments
and counter-memoranda submitted on behalf of the Salvadoran Government, is
that Mr. Sol, vice-president of El Triunfo Company, was guilty of an act of usurped
authority in assuming the permanent presidency of El Triunfo Company; that Sol,
Lopez, and Cochella were likewise guilty in their pretended removal of Burrell from the presidency thereof, and in their petition to have the court decree the company in a state of voluntary and judicial bankruptcy; that the court did not acquire lawful jurisdiction to decree the state of bankruptcy of said company; that these facts were apparent of record, and that the judge practiced an undue delay and discrimination of justice in passing on the question of his jurisdiction; and that the act of the President of Salvador in annulling the concession by arbitrary executive decree, on February 14, 1899, the next day after a call and notice had been issued and published by the majority stockholders for a general meeting of the stockholders, to enable them to take lawful steps to oust the usurping minority directors and to secure the release of the property by the court, was wrongful in itself and constituted in its effects a veritable intervention in the legal controversy between the parties, unduly influencing and affecting the regular and ordinary processes of justice and rendering nugatory the lawful measures contemplated and initiated by the majority stockholders; that this act of the President, whatever its motive, was indefensible from the standpoint of justice and private right, as well as of international law, and justifies and would require, if the controversy is not otherwise amicably, promptly, and satisfactorily adjusted between the parties, the intervention of this Government and the payment of an adequate indemnity to the American stockholders.

The grounds on which the foregoing conclusions are based are set forth at large in the accompanying memorandum.

Though the conclusion reached may not be satisfying to either of the contending parties, the Department is not without hope of convincing them that the case has been considered with the sole aim of reaching a decision which will vindicate the supremacy of justice over might, whether the latter should be invoked against the Government of Salvador or should be exercised by it in the destruction of vested rights of private property. If, as urged by Salvador, it were wrongful for the Government of the United States to decide a controversy and fix the amount of an indemnity by the sheer exercise of power, not less wrongful was the act of the Executive of Salvador in arbitrarily destroying rights of private property. The arbitrary use of power is not less wrongful on the part of Salvador than of the United States; and the latter, sharing the feeling of abhorrence expressed in the counter memorandum for gross interventions of any kind "in which brute force always prevails over right," has reached its conclusion.

The President of the United States cannot take from any man the slightest right, or even a doubtful right, even as against a confessed wrongdoer, without submission to the courts, whose rule of decision is: Is it lawful; is it just? The Government of Salvador can therefore appreciate the inability of the Government of the United States to conceive any other procedure as compatible with the existence of the State, which exists only to safeguard rights of property, of contract, of life and liberty, which cannot be taken away except upon a fair and impartial hearing and upon solemn judicial decision.

It is conceivable that the President of Salvador, animated by patriotic motives, felt that El Triunfo Company was not fully discharging the obligations of the concession, and that in a feeling of repugnance at its supposed incompetency he thought to put an end, once for all, to alleged inconveniences suffered by the public service; but the fact remains that the property of El Triunfo Company was taken away without due process of law. Such arbitrary executive action, even suppose it righteous in its results, is essentially unjust, since it proceeds by ignoring the substance of the forms of justice, without the observance of which there can be no security in the possession of any private right.

[Subinscription 1.]

MEMORANDUM.

From an attentive study of the documents submitted in the case the following facts are either admitted by both of the parties, or are, on the documentary evidence, established beyond dispute:

On October 6, 1894, the Government of Salvador granted for the period of twenty-five years, together with certain other incidental privileges, the exclusive privilege of steam navigation of the port of El Triunfo; that said concession was, on October 25, 1894, assigned to the Salvadorian corporation "El Triunfo Company, Limited," having a capital stock of $100,000 American gold, consisting of shares of $100 each; that 501 of these shares were, before the commission of the grievances hereinafter mentioned, and still are, owned by the Salvador Commercial Company, a corpora-
tion organized under the laws of the State of California; that the grant of said concession was lawful and valid, and that said El Triunfo Company acquired a vested right of property therein; that over 70 per cent of said capital stock has been paid; that said port was opened in 1886, and said company entered upon the use of its concession and expended large sums of money in the development of the same; that the profits of said concession during the year 1898 are stated by said company to have been $30,000 and are admitted by the Government of Salvador to have been $7,861.85 net for the first six months of said year.

That by the statutes of El Triunfo Company its directors were to be five in number, with three substitute directors or alternates; that the officers of said company were to be a president, vice-president, treasurer, and secretary; that articles 12 and 18 of the statutes or by-laws of the company provide that a special or extraordinary meeting of the directors can only be called by the president; that at the general assembly of stockholders, held June 10, 1898, there were elected as directors H. H. Burrell, Simon Sol, J. H. Ellis, Francisco las Plazas, and G. Lozano; and as substitutes, C. Cochella, A. Canessa, and E. B. Ruano; that the minutes of the twentieth session of the board of directors, held June 10, 1898, show "present the Messrs. H. H. Burrell, E. B. Ruano, J. H. Ellis, S. Sol, and G. Lozano, appointed by the general assembly of stockholders in session to-day to form the board of directors, which should exercise its functions during the current year;" that the board of directors on said day elected as president H. H. Burrell, as vice-president Simon Sol, as treasurer J. H. Ellis, as secretary F. las Plazas; that article 9 of the by-laws provides for five directors and three substitutes, who, according to the order of their nomination, shall supply the places of absent directors; that no power is given by the corporation statutes or by-laws to the board of directors, or to a majority thereof, to appoint one of the substitutes as a permanent director; that such substitutes can act as directors, according to article 9 of the by-laws, only in the order of their nomination and only when the principal fails; and that the record does not show that any notice or opportunity was given to the regular directors to attend the meetings of the board hereinafter specified, except Directors Sol and Lopez; and fails to show that the substitutes were called in the order of their nomination, or that there was any such failure of the principals as would authorize substitute directors to act in their stead.

That from the minutes of the continuation, September 1, 1898, of the twenty-third session of the board, signed by Lopez, Sol, and the substitute Cochella, failing to show the authority of Cochella to act as a regular director, it appears that they requested Burrell to resign the presidency—that is to say, they show that they "supplicated Burrell, the president, that for a prudent time he rest from the administration;"—but it does not appear that he resigned or vacated his office; that after the session was ended and the said minutes were completed, dated, and signed, as aforesaid, the following addendum, undated, was made under the word "corrections," signed only by Sol and Lopez:

"Inasmuch as the director of the Company of El Triunfo, Mr. H. H. Burrell, without giving notice and contrary to the express resolution of the board of direction, has abstained himself, and this company not being able to continue without a head, as it finds itself, as vice-director, appointed conformably to article 11 of the statutes of the company, the undersigned assumes the office of president of the same.

"Simon Sol.

"L. Lopez."

That article 11 gave no authority whatsoever to said Vice-President Sol to constitute himself permanent president of said company; that, as shown by the records of said company, the said Burrell attended said twenty-third session and every session of the board from the first to the twenty-third, both inclusive; that, in keeping with the above proceedings, the said Sol usurped the presidency of the board on the unfounded pretension that Burrell had vacated or been removed from his office as president; that this addendum to the minutes by Sol that he was president of the company on account of the absence of Burrell is a manifest subterfuge—styled in the minutes "corrections"—to give an air of legality to his usurpation; that the pseudopresident, Sol, made a pretended call of a meeting of the board for September 22, 1898; that said call was a mere nullity, and the action taken by Sol, Cochella, and Lopez, under that call at said pretended session and without call from the lawful president, assuming to depose Burrell from the presidency, is in fact an admission of the prior usurpation of Sol, sought to be legalized by another act of usurped authority; that another, the twenty-sixth and extraordinary, session of the pretended board was held October 14, 1898, without notice or call by the lawful president, and a resolution was adopted to throw the company into judicial bankruptcy; that a petition signed by said Cochella, Sol, and Lopez, dated October 17, 1898, was presented to the
judge of the primary court of claims and of commerce, requesting said judge to declare the voluntary and formal bankruptcy of said company, and on October 19 following the judge declared the state of bankruptcy thereof and appointed M. Meardi receiver, who accordingly took possession of the books and property of said company, that said petition in bankruptcy was made and filed in court by the pseudo-director Cochella and by Sol and Lopez in the professed capacity of directors of the company; that it is contended by the Salvadoran Government that the formalities of law were not complied with in the organization of the corporation, and that therefore it was simply an unincorporated association of persons, and that the proceedings in bankruptcy were not against the corporation, but against its associated members; that no informality in the organization of the corporation has been pointed out that has caused the nullity affecting the validity of the incorporation existed in fact; that this fact is corroborated by the further fact, as appears from the records of the proceedings before the court, that the bankruptcy proceeding was against the corporation as such, and not against its members as collective associates; that the petition in bankruptcy was filed by Cochella, Sol, and Lopez in the professed capacity of directors of the company; that they failed to comply with the last paragraph of article 1254 of the commercial code in relation to the bankruptcy of corporations, which provides: "If the debtor shall be a society, the petitions shall be subscribed by all the collective associates who hold this position according to the society compact and who were present at the domicile of the society;" that the records fail to show the absence of any of the regular and principal directors or stockholders of the company from the domicile of the society; that, in fact, said bankruptcy proceeding was prosecuted solely against said corporation, without the authority of its lawful president, and without the authority of any of its stockholders except Sol, Lopez, and Cochella; that said proceeding was carried on against said corporation only is further shown by the order of the judge, entered the same day, which declares "as parties in this judgment and in representation of the company of El Triunfo, Limited, the Messrs. Sol, Cochella, and Lopez, let be declared in a state of bankruptcy the designated company." And the court appointed Meardi receiver of all the property of the company, and the fact is, as shown by the entire proceeding taken by the petitioners, by all the declarations and orders of the court, that the proceeding and adjudication were against the corporation and not against its members as collective associates, against whom in that capacity no steps whatever were taken; that articles 1241 and 1242 of the code declare that bankruptcy is an indivisible status, and consequently covers all the goods and debts of the bankrupt, and that the bankruptcy of a collective society implies the personal bankruptcy of all its members; that article 370 of the Salvadoran code of commerce regarding insolvency of corporations provides that "the directors shall state this fact in a declaration signed by all," which was not done; that the records fail to show that the petition was signed by all the directors, as required by the laws of Salvador, and fail to show the absence or inability of all or any of the directors to sign the petition; that the records fail to show facts necessary to give the bankruptcy court jurisdiction of the petition; that the Salvador Commercial Company and their stockholders raised this question before the court and sought in vain to have it decided, as shown by its own records; that on February 17, 1899, appeared before the court Mr. Lozano, Mr. Meta, Mr. Rossi, the firm of Dreyfuss, Mr. Ellis, and the Salvador Commercial Company, representing 580 shares of the stock, and represented to the court that on September 22, 1898, said Sol and Lopez in the most arbitrary manner, having summoned Cochella, decided to deprive Burrell and Ellis of their respective offices of president and treasurer, and proceeded without any authority to present the company in bankruptcy," that this conduct was "notoriously illegal from their not having powers to dissolve the society in this manner with a formal letter of convocation of the general assembly, and that this letter had not granted its dissolution in any form, much less in the very grave one which they pretend to verify, it is undeniable that this decree does not have any legal value, except as an illegal act punishable by law;" that the board of directors "under no supposition have the right to proceed as they have done, and neither could they be considered in the judgment as persons who legitimately represent the company treating it for an anonymous society; that the parties appearing before the judge constituting by the value of their shares the veritable chief part of all the interests of the company, and not being disposed to approve this nullity, by the present instrument they protest against the illegality of all done in their name; that, moreover, for such an act, the legislature has provided that all members of the board must concur in this act, which did not take place, as by said legislative provision presupposes always the necessary resolution of the general assembly," and appointed Dr. Leopoldo Alejandro Rodriguez their attorney "for the purpose of presenting the present protest and to put a final end to the judgment,"
The majority in value of the creditors likewise protested, the claim of the Bank of Salvador not then being due. That said Rodriguez, as such attorney, on February 23, 1899, likewise reiterated before the judge the protest of his constituents, and moved the court to declare the nullity of the judgment.

That not until July 5, 1899, did the court ever enter an order allowing said Rodriguez to appear and represent his constituents "in order to resolve upon the adverse exceptions, and granted three days' time for answer thereto," and the fact thereby appears from the action of the court that the exceptions raised were sufficient in substance and in form to test the question of the jurisdiction of the court; that in the writ dictated by the judge July 5, 1899, the court, instead of allowing the Salvador Commercial Company to be represented by Mr. Rodriguez, the lawyer who had been deputed by and appeared for this company and others in presenting the question to the court, restricted the representation of Mr. Rodriguez to the presentation of the question raised by other aggrieved parties, and named, to represent the Salvador Commercial Company, Mr. Ellis, who is not a lawyer, and who at the time was not in the Republic of Salvador, as is shown by the deposition of J. Jirkowsky and by that of Ellis, in which he deposes that he had no knowledge or information of this writ, or of the action of the court which it purports to show, until he saw the reference to it in the counter memorandum of the Republic of Salvador in December, 1900. Copies of said affidavits are hereto attached.

That not until two weeks thereafter, to wit, on July 18, 1899, did Dr. Pedro Chavarria enter his appearance as "attorney of the secretary of the board of direction, Luis Lopez."

That not until October 7, 1899, did Cochella and Dr. Chavarria, the latter as attorney for Lopez, file any answer alleging "that the nullities alleged by Dr. Rodriguez are neither just nor legal," and made reference to the judicial proceedings; and that said Sol and Lopez have never answered.

That the nullity of these proceedings is apparent on the face of the record, and showed the lack of jurisdiction of the court to take cognizance of the petition and to decree the state of bankruptcy of the company.

That the record of the proceedings corroborates the affidavit of Dr. Rodriguez. (Copy attached.)

That the court has never yet taken any action or made any ruling on the motion of Dr. Rodriguez to declare the nullity of the judicial proceedings, thereby preventing an appeal and constituting a denial of justice.

That no creditor of said company asked or sought to have said company declared bankrupt, showing the high probability that said company was not in a state of bankruptcy.

That as appears from the diplomatic correspondence and the counter memoranda of the Salvadoraneean Government, these illegal proceedings are upheld and justified by said Government, which has thus made itself a party to the original proceeding.

That the Salvador Commercial Company and others, representing a majority of the stockholders of El Triunfo Company, issued due notice and call, February 13, 1899, for a meeting of the stockholders of said company to be held at San Salvador February 28, 1899, for the purpose of taking steps to annul the proceedings of the court and to recover control and possession of the property, and the President of Salvador the next day, February 14, 1899, intervened in the struggle by an executive decree, closing the port of El Triunfo to importations, and thereby destroying the concession in which said company, as trustee for its stockholders, had acquired and held a valuable and vested right of property.

That this act of sovereignty, even on the supposition that the proceedings of the court were legal, effectually paralyzed the arm of the court, by destroying the chief and most valuable asset of the company for the liquidation of its debts and for the distribution of any surplus among the shareholders who would be equitably entitled thereto after the payment of its debts on the extinction of the anonymous society; and hence that this act of Government rendered futile and nugatory any further action by the Salvador Commercial Company to set aside the proceedings of the court; that the Government of Salvador granted on May 13, 1899, an exclusive concession for said port to Messrs. Araño, Arviola, and Gonzales, and at the same time the President, by executive decree, reopened the port.

That the new concessionaires accepted their concession; that this is shown by the official report of the minister of the army and navy to the National Assembly, published in the Official Gazette, March 7, 1899, which recites:

"The new navigation company of the port of El Triunfo, organized by virtue of the contract entered into with Drs. Manuel E. Araño, Ramon Garcia Gonzales, and J. Francisco Arviola, brought for loading and unloading a small steamer, the Malaca, which it bought of an English company. Unfortunately, when it had hardly begun
to serve its purpose, it was lost on the high seas, without its having been replaced up to date. Aside from this only one sailing vessel has entered the port, taking away a cargo of wood."

It is also shown by the affidavit of the customs officer of San Francisco (copy attached). These acts of sovereignty inflicted irreparable injury and damage on the vested legal rights of property of said El Triunfo Company and on the equitable rights and interests of stockholders therein.

That on August 31, 1900, the President of Salvador by an executive decree, after the United States had intervened, revoked the decrees of February 14 and May 13, and declared that the decree of February 14, 1899, as well as the concession of May 13, was each dictated "until a definite arrangement could be made with the bankrupt company and the Government," thus imposing conditions and interfering with the lawful freedom and independence of action of El Triunfo Company and of its stockholders, in accordance with the original concession, and thereby in effect expressly sanctioning the judicial decree of the state of bankruptcy which the Government had made effective by destroying said franchise.

That the executive decree of August 31, 1900, still further sanctioned these wrongs by declaring suspended the services of the port until the Government (in agreement with the company) decided otherwise, thus constituting a fresh intimidation of the company and a further denial and impairment of its rights under the concession; thereby casting a further cloud on the commercial standing of said company.

**LAW.**

In the above statement the fact is not found whether the company was insolvent or not—that is, whether it had lost 50 per cent of its capital. The evidence submitted by the parties is conflicting. But it is a significant fact that the Government of Salvador nowhere takes into account the value of the franchise, which is the chief asset of the company. The solvency of a corporation or individual is presumed as a matter of law. It is shown in this case by the evidence submitted by the Salvador Commercial Company. The presumption is not satisfactorily disproven by the conflicting accounts and statements of Salvador.

But it is unnecessary to make an absolute finding of the fact whether the company was solvent or not; for, even if it was insolvent, its concession would be held with the other of the company’s property and be exploited by the receiver for the benefit of the company, its creditors, and stockholders, until the debts were paid and the company rehabilitated in its property, or until sold by the court in course of liquidation, in which event the stockholders would be entitled to any surplus remaining after the payment of debts. If, therefore, the decree of February 14 was wrongful, it was not the less wrongful in law whether the company was solvent or insolvent, which could only affect the damages.

The ultimate and controlling fact on which the decision turns is the Presidential decree of February 14, 1899, annulling the concession and closing the port to importations, the destructive force of which extends to this day in its injurious effects on the company, first, by annulling the concession and then by an imperfect rehabilitation on terms inconsistent with the concession. The act of the President destroyed the very end for which the corporation El Triunfo Company was created; and this in effect wrought the dissolution of the corporation by rendering impossible of performance the principal consideration for which the concession was granted. It had the inevitable effect to render impossible the exercise of its powers, thereby rendering the corporation ultimately and inevitably insolvent by destroying its earning capacity. The question then is whether the Government of the United States may justly and lawfully intervene in behalf of the Salvador Commercial Company, an American corporation, which owned a majority of the stock of El Triunfo Company, a Salvadorian corporation, on account of the decree of February 14, which was so timed as to be in effect an interposition in the pending litigation, thereby perverting the due and regular course of justice, rendering nugatory the lawful efforts of the majority of the stockholders to regain control of the company and terminate the legal proceedings by the destruction of the very object of its existence.

It is impracticable to consider in detail all the numerous contentions made on behalf of the Government of Salvador during the prolonged discussions of this case. If any of them appear to be overlooked, it is not because they have not each received due consideration, but only because the decision turns on a few principal questions which will be considered. It is contended by Salvador:

*First. That "the decree of February 14 was issued in the exercise of national sovereignty;" that the franchise granted by the concession "formed a part of the sovereignty and its enjoyment could not be delegated to any private corporation."*
The concession was granted by the executive and ratified by an act of the national congress pursuant to the constitution of Salvador. "Allegans contraria non est audiendus."

Second. That by the stipulations of the concession the stockholders agreed in advance to renounce diplomatic intervention and bind themselves in any case of controversy between the parties to submit their differences to private arbitration for determination. The contract does indeed contain stipulations which read, according to the translation furnished by the Salvadorian Government, as follows:

"Art. 8. The company shall have its domicile in this Republic, which may be agreed upon by the partners who may compose it, and shall be subject to the laws and courts of the country.

"Art. 9. In the event that some difficulty shall arise between the Government and the company, the latter shall abandon any diplomatic intervention with reference to anything that may refer or relate to this contract, and both parties hereto bind themselves that any difference shall be decided by friendly arbitrators, each party to appoint one, and in case of difference of opinion the two to appoint a third to decide it, both parties binding themselves beforehand, and without appeal, to accept the decision rendered by the arbitrators."

A consideration for the agreement to renounce diplomatic intervention was the agreement to arbitrate. But this agreement was violated by the President of Salvador by annulling the concession arbitrarily, instead of resorting to the prescribed arbitration. The Government of Salvador, having violated the agreement, can not appeal to that agreement in support of its own wrong. It can not plead the contract in bar of intervention after having itself repudiated the contract by which arbitration was provided as a remedy. Nor can it destroy the concession and escape the consequences of its unlawful act by attempting to reinstate, in an equally arbitrary and imperfect manner, the right it had annulled. No small part of the damage results from the injury done to the commercial credit and reputation of the company whose property is subject to such caprice. This injury and the loss suffered by the closing of the port are not compensated by the decree of August 31.

In the counter memorandum it is stated that the company was not injured by the appointment of Meardi as receiver, because Meardi was discharging the obligations of the concession. If this statement is true, then the statement in the decree of February 14 of the pretext for its issuance is untrue—that the obligations of the service of the port were not being performed.

In any event, the Government was precluded by the terms of its grant from making the decrees of February 14 and May 13. If the President of Salvador claimed the company was not performing its obligations under the contract on account of the state of bankruptcy, he was denied the power to decide that question arbitrarily. But in truth this controversy is not upon the construction and performance of the contract, but it originates in the destruction of the concession itself, and there is no agreement to waive diplomatic intervention for that cause. It is more than doubtful whether the Government of the United States would admit the competency of its citizen to barter away his right to its protection against tortious, arbitrary acts of lawlessness on the part of any state.

On this question precedents are not wanting. The Imperial Government of Germany has decided in a case arising in Venezuela that it will no longer consider itself bound by the clause in most contracts between foreigners and the Venezuelan Government which states that all disputes growing out of the contract must be settled in the courts of the latter; that the German Government is not a party to these contracts and is not bound by them; and that it reserves the right to intervene diplomatically for the protection of its subjects whenever it shall be deemed best to do so, no matter what the terms of the contract in this particular respect are.

The British Government, in a case arising in the United States, has taken the position that in a matter of international obligation its right of intervention is not affected even by the failure or omission of the individual to avail himself of a remedy before the courts for the grievances complained of.

Third. That under the constitution of Salvador, which was binding upon El Triunfo Company and its stockholders, diplomatic intervention is inadmissible.

While the Government of the United States has not taken so extreme a position as Germany and Great Britain, it has declared that "laws of a foreign state attempting to deprive citizens of the United States from having recourse to their own Government to press their claims diplomatically will not be regarded as internationally operative by the Government of the United States." (Wharton's Digest, vol. 2, sec. 242, p. 695.)
The constitution of Salvador declares:

"Title IV. Art. 45. Foreigners, from the moment they arrive in the territory of the Republic, shall be strictly bound to respect the authorities and to observe the laws, and shall acquire the right to be protected by them.

Art. 46. Neither Salvadoran nor foreigners can in any case claim of the Government any indemnity for damages or detriment which may be caused by factions to their persons or property, having their speedy remedies to prosecute their claims against guilty officials or individuals.

Art. 49. No international agreement can modify in any particular the provisions contained in this title.

Art. 50. Foreigners shall remain subject to a special law of alienism."

The law enacted by the Salvadoran Congress in relation to foreigners provides:

"Art. 38. Every foreigner is obliged to obey and respect the institutions, laws, and authorities of the Republic, as provided by article 45 of the constitution, and to obey the decisions and sentences of the tribunals, without power to seek other recourse than those which these same laws give to Salvadoranians.

Art. 39. Only in cases of a denial of justice or of a voluntary delay of its administration can foreigners appeal to the diplomatic forum; but only after having exhausted, in vain, the ordinary remedies provided by the laws of the Republic.

Art. 40. It is provided, however, that there is a denial of justice only when the judicial authority shall refuse to make a formal decision on the principal matter in dispute or on any incidents of the case of which it has taken cognizance or which is submitted to its jurisdiction. Consequently, by the sole fact that the judge has pronounced a decree or sentence, in whatever sense, it can not be claimed that there is a denial of justice, even though it may be said that the decision is iniquitous or given against express law.

Art. 41. The delay of the administration of justice ceases to be voluntary whenever the judge finds it in any reason of law or in any physical impediment which is not in his power to remove."

Without entering into an elaborate analysis of these singular provisions of the constitution and laws of Salvador, it is obvious that even if not ingeniously contrived for the purpose, they would have the effect, if carried out in practice to a logical conclusion, to defeat the ends of justice in respect of foreigners. Under the claim of obedience to the local laws, the constitution prohibits the making of a treaty which would guarantee the rights of aliens, recognized among all civilized states, to appeal to their governments for protection; next commands obedience to the local laws; next follows the enactment of laws requiring obedience to the decisions and sentences of the tribunals, without power to seek other recourse than those which these same laws give to Salvadoranians; and finally, a legislative definition of a denial of justice, which is in itself the consecration of injustice, by declaring that a decision is just even though it is grossly and confessedly iniquitous.

The will of the sovereign may be expressed either through constitutional and legislative enactments or through the unrestrained action of the executive. That will, whether expressed in the one form or the other, can not control the international relations of states; can not bind any foreign state. When there is a clash of opinion between two sovereign states on the right of intervention when invoked by the citizen of either against the other, the right is to be determined by principles of international law affecting states in the sovereign capacity and applicable to the given case. An attempt to prohibit by municipal law the right of intervention given by the common law of nations is inconsistent with sovereignty; and in all such cases the right of intervention is decided upon the merits of the particular case. A sovereign state can not yield this right without abandonment of one of its own most imperative duties.

Fourth. In the third counter memorandum prepared for the Salvadoran Government by Messrs. Cotton & White, the case of the Antioquia is cited in support of the contention that intervention does not lie in behalf of American stockholders in a foreign corporation.

In that case the vessel Antioquia was owned by a Colombian corporation, whose capital stock was held by nationals of the United States, Great Britain, and other states. The vessel was seized by Colombian authorities as an act of military necessity. The president of the State of Magdalena, the authorities of which had seized the vessel, "offered to return the vessel and make prompt indemnification without the necessity of a reclamation or of judgment by the courts."

This was an acknowledgment of the liability and an offer to make prompt compensation. The case itself, together with the admission and offer of the Colombian Government, is an authoritative precedent establishing the illegality of the action of
the Executive of Salvador in this case and its liability to make indemnification to El Triunfo Company. This has not been done in this case. On the contrary, it has steadfastly upheld its action, and this attitude of the Colombian Government distinguishes the case from the one in hand.

The acknowledgment and offer of the Colombian Government disposed of the question of intervention, for Secretary Seward declared that "the Federal Government of Colombia declares that it has instructed its procurador to collect the necessary documents and submit them to the legal tribunals with a view to the liquidation of damages. It therefore invites the agent of the company to furnish his bill of charges and his proofs. With this I think the claimants must rest satisfied."

The question was not presented for actual decision, as in this case, of the right of intervention where the act of the Government has practically destroyed the corporation by the destruction of the object of its incorporation and the means of its operation. This precise question arose and was decided by Secretary Blaine, and by the British Government, in the case of the Delagoa Bay Railway Company against Portugal, hereinafter mentioned.

The cited decision of Secretary Frelinghuysen (Wharton's Digest, vol. 2, p. 547) directly supports the claimant in the case in hand. Secretary Frelinghuysen held that "redress must be sought through the board of directors of the company or by vote of the stockholders, or by other remedies provided by the charter or by the by-laws of the company."

That is precisely what the stockholders of El Triunfo Company were proceeding to do when the decree of February 14 rendered their proceedings nugatory by annulling the concession and rendering impossible the plenary exercise of the powers of the corporation.

While the Department does not dispute the contention that intervention by the Government of the United States would not be in entire accord with certain dicta expressed in the case of the Antioquia in respect of intervention in behalf of American stockholders in a foreign corporation, it is consistent with the actual grounds of that decision. But if all the reasons stated in that case against the right of intervention were to be accepted, even if intervention had been refused solely on the academic reasons given, the decision of this case would be controlled by the later decision of the Department in the case of the Delagoa Bay Railway.

In that case a concession had been granted in 1883 by the Portuguese Government to Colonel McMurdo, an American citizen, to construct a railroad from Lourenco Marquez to the frontier of the Transvaal. The concession was transferred to a Portuguese corporation, in which Colonel McMurdo owned 498,940 out of 500,000 shares and £425,000 of the debenture bonds of the company. An English corporation—the Delagoa Bay and East African Railway Company—was formed and McMurdo assigned to it his shares and bonds of the Portuguese company, and the railroad was constructed with the funds thus raised.

The Portuguese Government canceled the concession, and Colonel McMurdo and the British shareholders in the English corporation applied to their respective Governments for protection. The American minister, under instructions from Secretary Blaine, protested against the act as unjust and demanded the restoration of the property or indemnity. Secretary Blaine held that the seizure of the railway by the Portuguese Government was an act of confiscation; that the Portuguese company being without remedy and having ceased practically to exist, the only recourse was intervention.

The Portuguese Government contended that it had no concern with the English company and could only recognize the Portuguese company, which had the power of appealing for protection to the laws of Portugal. But the British Government held that this contention was inadmissible for that the Portuguese company had for all practical purposes ceased to exist.

The Portuguese Government, however, annulled the contract and seized the railroad property. The concession provided that differences between the Government and the company in respect of the performance of the contract should be decided by arbitration; and the British Government held that "there was no meaning in the acceptance of arbitration after the party accepting it had settled the disputed question in its own favor by force;" that "the question at issue is not the motive, but the justice of the seizure;" that "the action of the Portuguese Government was wrongful and violated the clear rights and injured the interests of the British company, which was powerless to prevent it, and which, as the Portuguese company is practically defunct, has no remedy except through the intervention of its own Government;" that "the British investors have suffered a grievous wrong," and "that for that wrong Her Majesty's Government are bound to ask for compensation from the Government of Portugal."
Secretary Blaine, in reply to the attitude of the Portuguese Government, held that the Portuguese Government in its correspondence "virtually admitted the facts upon which this Government's opinion in respect to the confiscation is based;" that having annulled the concession, the Portuguese Government now appeals to its provisions for arbitration; that "it is not within the power of one of the parties to an agreement first to annul it and then to hold the other party to the observance of its conditions as if it were a subsisting engagement," and declared that the United States "will not allow the Portuguese company to be interposed so as to obstruct the ends of justice."

See Appendix for a fuller statement of this important case.

As the latest precedent, as well as for the solid grounds on which the decision was based, the Department feels constrained to follow it and to hold that the right of intervention exists in this case. Without intervention, confessedly, no adequate remedy is given by the laws of Salvador to assure full and due compensation for the arbitrary and lawless act of the Executive in annulling the concession, then granting it to others, and then rehabilitating it on terms inconsistent with the original grant, thereby casting a cloud on the original title, rendering its enjoyment insecure and doubtful, causing loss of profits of exploitation, and inflicting grave injury on the commercial credit and reputation of the lawful owner of the concession and seriously impairing its commercial value.

Intervention is therefore legitimate. This conclusion is moreover justified because compelled by the great law of necessity—by the demands of justice, which is the supreme necessity.

The distinguished European publicist, Pradier-Fodéré, states:

"It is the duty of every State to protect its citizens abroad. It owes them this protection when the foreign State has proceeded against them in violation of principles of international law—if, for example, the foreign State has despoiled them of their property."

Vattel says:

"Whoever uses a citizen ill indirectly offends the state, which is bound to protect the citizen, and the sovereign of the latter should avenge his wrongs, punish the aggressor, and, if possible, oblige him to make full reparation; since otherwise the citizen would not obtain the great end of the civil association, which is safety. But if a nation can only approve and ratify the act of the individual (or if he does it himself), it then becomes a public concern, and the injured party is to consider the nation as the real author of the injury."

Halleck says:

"There can be no doubt that a state is responsible for the acts of its rulers, whether they belong to the executive, legislative, or judicial department of the government, so far as the acts are done in their official capacity." (International Law, Vol. I, Chap. XIII, p. 393.)

DENIAL OF JUSTICE.

Calvo, Dictionary of International Law, defines justice as, "rendering to each one his due, respecting the rights of another, while also conforming our own actions to the law."

The same author defines a denial of justice as "every refusal to give anyone his due."

"The denial of justice by one government to the citizen or subject of another—that is to say, reparation for an evident injury or wrong—justifies recourse to reprisals by the government of the foreigner who claims this reparation.

"Those who resort to foreign countries are bound to submit to their laws. The exception to this rule, however, is that when palpable injustice—that is to say, such as would be obvious to all the world—is committed toward a foreigner for alleged infractions of municipal law, of treaties, or of the law of nations, the government of such foreigner has a clear right to hold the country whose authorities have been guilty of the wrong accountable therefor." (Wharton's Digest, vol. 2, p. 612, sec. 230.)

"When citizens of the United States go to a foreign country, they go with the implied understanding that they are to obey its laws and submit themselves in good faith to its established tribunals. But the case is widely different when the foreign government becomes itself a party to important contracts, and then not only fails to fill them, but capriciously annuls them, to the great loss of those who have invested their time and labor and capital from a reliance upon its own good faith and justice." (Wharton's Digest, vol. 2, p. 613, sec. 230.)

"It is the right and duty of a government to judge whether its citizens have received the protection due to them pursuant to public law and treaties.

"In cases of a denial of justice, the right of intervention through the diplomatic
channel is allowed, and justice may as much be denied when, as in this case, it would be absurd to seek it by judicial process as if it were denied after having been so sought.” (Wharton’s Digest, vol. 2, pp. 617-618, sec. 230.)

“International justice may be denied by studied delays and impediments for which no good reason can be given, and which are in effect equivalent to a refusal, or by an evidently unjust and partial decision.” (Wharton’s Digest, vol. 2, p. 649, sec. 280.)

CONCLUSION.

In its second counter memorandum, the Government of Salvador proposed “to raise the judgment of bankruptcy and to rehabilitate the bankrupt company in the administration of its property,” “if the claimants will submit to an equitable and reasonable settlement of the whole question.”

In the counter memorandum dated October 27, 1900, the Government of Salvador “repeats the offer of assistance by all the means in its power to rehabilitate El Triunfo Company in the management of its property and the exploitation of its privileges and franchises.”

In the spirit of these propositions, which, if carried out by Salvador, will greatly minimize the damages, the Government of Salvador should promptly take the proper steps to reinstate El Triunfo Company unconditionally in the possession and enjoyment of its property, including the concession, and to restore to the Salvador Commercial Company its legitimate control of said El Triunfo Company, discharged from the court. There would then remain the question of compensation for the damages caused to the American stockholders by the wrong initiated by the order in bankruptcy and the appointment of the receiver. In solving this question, the rights of the Salvadoran stockholders and the legitimate rights of creditors of El Triunfo Company should be respected. This is in entire harmony with the sentiment of Salvador, “that in any settlement which is evolved, it shall be made without injury to the interests and rights of the other shareholders, not plaintiffs.”

This equitable solution may be reached:

By ascertaining the entire sum of the damages sustained by “El Triunfo Company” by the wrongs committed. Out of this sum should be first paid the legitimate debts of said company, if sufficient for that object, and out of the residue, if any, should be paid to the Salvador Commercial Company a sum which shall bear to said residue the proportion of 501 to 1,000; the remaining fraction of four hundred and ninety-nine one-thousandths being retained by Salvador, or being paid by it, at its own option, to the Salvadoran stockholders. The proportion actually paid to American stockholders should, of course, exceed the fraction of five hundred and one one-thousandths, if American stockholders own more than 501 shares. The American stockholders would be entitled to receive such proportion of the damages sustained as the number of shares owned by them bears to 1,000. The entire amount of the damages sustained by El Triunfo Company should be ascertained, in order to assess the amount of the indemnity, if any, which would belong to the American stockholders after the payment of the legitimate debts created by the lawful managers of the company. This would render the indemnity complete and effective to recompense the American shareholders.

In the interest of the mutual friendship and good will which have always distinguished and blessed the two Republics, it is hoped that the above solution, or some other which is equitable and satisfactory to the parties, may be promptly reached by amicable negotiation. If not, the only alternative would seem to be to assess in a lump sum the indemnity to be paid to the American stockholders, to be ascertained in the manner above indicated.

In addition to the above indemnity, the Salvador Commercial Company should also be paid its costs of prosecution and its attorney’s fees, reasonably incurred.

[Subimclusion 2.]

APPENDIX.

The right of diplomatic intervention by the Government of the stockholders of a corporation whose charter has been granted by a foreign state.

THE DELAGOA BAY RAILWAY ARBITRATION.

In the matter of the Delagoa Bay Railway arbitration, the Government of the United States and the Government of Great Britain jointly, as well as severally,
intervened in the interests of American and British stockholders and bondholders, although the concession to build the railroad was legally vested in a corporation organized under the laws of Portugal. The facts are these:

In 1883 Edward McMurdo obtained a concession from the Portuguese Government to construct and operate a railroad from Lourenço Marques to the frontier of the Transvaal. It was stipulated in the concession that he should form a company for this purpose under the laws of Portugal, and such company, called the Lourenço Marques and Transvaal Railway Company, was organized in accordance therewith. In May, 1884, Colonel McMurdo assigned his concession to the Lourenço Marques and Transvaal Railway Company, and received as consideration therefor 498,940 out of 500,000 shares of the stock of the said Portuguese company. By the same instrument Colonel McMurdo agreed to construct the railroad in consideration of the transfer to him of the whole of the debenture bonds of the company, amounting to £25,000.

For several years McMurdo was unsuccessful in his efforts to float these bonds. Finally, in 1887, he obtained the assistance of English capitalists, who, however, stipulated that their interests should be represented by the bonds and shares of a company to be incorporated under English laws. In this way the Delagoa Bay and East African Railway was formed, with a capital of £500,000 in shares. McMurdo then assigned to this English company the shares and bonds of the Portuguese company and the benefit of his contract with said Portuguese company of May, 1884, the English company undertaking to indemnify him in respect to the obligations of his contract, to pay him £115,500, and to give him their entire issue of stock. The company then issued debenture bonds to pay McMurdo and raise money to build the road.

In July, 1887, the Portuguese Government intimated that it would require an extension of the line of the railway. Meantime the railway was completed in accordance with the original plans and accepted by the Portuguese Government, with a reservation of the question as to the further extension of the line. Controversies over this extension led to the confiscation of the road in June, 1889, by Portugal.

The first step of the United States toward intervention was taken May 9, 1889, when Mr. Blaine instructed Minister Lewis, at Lisbon, to send the Department all the documents relating to the McMurdo concession. On June 19 Mr. Blaine further instructed Mr. Lewis that it was reported that the Portuguese Government intended to take possession of the railway on the 24th of June, and he expressed the hope that no decisive action might be taken until the Government of the United States could investigate the case and make known any objections it might desire to express. At the same time he reserved all the rights of the United States in the matter.

When it was reported that the concessions had been canceled, Mr. Lewis was instructed to make a formal protest reserving all rights the heirs of McMurdo, who had died meanwhile, and other American citizens might have in the concession; and on October 12, 1889, Mr. Loring, who had succeeded Mr. Lewis as our minister at Lisbon, was directed to "inform Portuguese minister for foreign affairs that this Government, after careful investigation, views the forfeiture of Delagoa Railway concession and confiscation of the property of American citizens as unwarrantable and unjust, and that it will demand and expect the restoration of property or indemnity for losing, inflicted by Portuguese Government at the time of threatened forfeiture."

On November 8, 1889, in the course of a long instruction to Mr. Loring, reviewing the facts in the case, Secretary Blaine says:

"Upon full consideration of the circumstances of the case, this Government is forced to the conclusion that the violent seizure of the railway by the Portuguese Government was an act of confiscation which renders it the duty of the Government of the United States to ask that compensation should be made to such citizens of this country as may be involved. * * * The Portuguese company being without remedy and having now practically ceased to exist, the only recourse of those whose property has been confiscated is the intervention of their respective governments."

The British Government had already taken action for the protection of its shareholders independently of the United States. On June 24, 1889, Mr. Petre, the British minister at Lisbon, was advised by Lord Salisbury that should the Portuguese Government take steps to cancel the concession and forfeit the line the British Government would be justified in intervening diplomatically in order to prevent such action. The instruction continues:

"You should accordingly inform Senhor Barros Gomes that if the Government refuse to grant the extension of time for completion of the line * * * and decline to submit the questions at issue to arbitration, this would, in the opinion of Her Majesty's Government, be, on their part, a very serious step." (No. 178, from London, February 13, 1890, p. 16 of inclosure.)
On September 10, 1889, Lord Salisbury instructed Mr. Petre as follows (confidential enclosure with Mr. Lincoln's No. 109, October 24, 1889, from London):

"Senhor Barros Gomes, in his notes of the 26th of June and 1st of July, while admitting the right of Her Majesty's Government to advocate, on just grounds, the claims of British subjects, contended that in this case such advocacy was not needed, as the Portuguese Government had no concern with the English company, and he asserted that they could only recognize the Portuguese company, which had the power of appealing for protection to the laws of Portugal.

"If this contention were admitted, the interests of the British company would be at present absolutely unprotected, for the Portuguese company, after submitting, under protest, to a decision which it felt itself incapable of resisting, has, for all practical purposes, ceased to exist. But Her Majesty's Government consider this view to be altogether untenable. Senhor Barros Gomes must, indeed, in advancing it have forgotten the circumstances which attended the establishment of the British company.

"It is unnecessary to recapitulate the history of the concession given to Colonel McMurdo in 1888, or the subsequent formation of the Portuguese company (the Lourenço Marques and Transvaal Railway Company), and of the successive prorogations of the term fixed for the completion by that company of the contract. It is sufficient to remark that the company, notwithstanding the extensions of time granted to it, was unable to find the capital to enable it to fulfill its obligations. It was in consequence of this failure that an attempt was made to obtain funds in England. The attempt was successful, and in March, 1887, the British company—the Delagoa Bay and East African Railway Company—was formed in London with the object of working the concession; and the necessary capital was subscribed.

"The Portuguese Government, basing their action on article 42 of the concession, annulled the contract, seized by force the rails, bridge work, and other material of the railway, and thus confiscated the whole property of the English company. This step was taken, notwithstanding that provision had been expressly made in the concession for the amicable settlement of a dispute of this character, it having been stipulated in the fifty-third article that all questions which might arise between the Government and the company touching the execution of the contract should be decided by arbitration. This declaration made by Senhor Barros Gomes in his note to you of the 26th of June last, that arbitration would be accepted, but that in the meanwhile the annulment of the concession could not be suspended, can only be regarded as illusory. There was no meaning in the acceptance of arbitration after the party accepting it had settled the disputed question in its own favor by an act of force.

"Into the merits of the question I do not propose to enter. The question at issue is not the motive, but the justice of the seizure.

"Her Majesty's Government are of opinion that the Portuguese Government had no right to cancel the concession nor to forfeit the line already constructed.

"They hold the action of the Portuguese Government to have been wrongful and to have violated the clear rights and interests of the British company, which was powerless to prevent it, and which, as the Portuguese company is practically defunct, has no remedy except through the intervention of its own Government.

"In their judgment the British investors have suffered a grievous wrong in consequence of the forcible confiscation by the Portuguese Government of the line and the materials belonging to the British company and of the security on which the debentures of the British company had been advanced, and that for that wrong Her Majesty's Government are bound to ask for compensation from the Government of Portugal."

The answer of the Portuguese Government to the British Government (confidential enclosure with Mr. Lincoln's No. 141, December 27, 1889) is in part as follows:

"It is incorrect to suppose that the Portuguese Lourenço Marques Railway Company has ceased to exist. It is evident, therefore, that the company, on the one hand, did not make use of the power conferred upon it by law of dissolving on its own accord, and, on the other hand, it cannot be held to be legally extinct by the sole fact of the decree of the 25th of June having rescinded the contract of the 14th of December, 1883.

"It is true that Lord Salisbury's dispatch only declares the company extinct for all practical purposes; but not even from this strict point of view is the noble lord's assertion justifiable. As regards the decree of the 25th of June up to the present,
the company has done no more than protest against what it supposed to be the unjust provisions of the decree. This is true. But that very protest is an evident sign that it did not look upon itself as extinct, and there is nothing to prevent it from still appealing, as I said, to the court of arbitration, the constitution of which in accordance with article 53 of the contract insures the greatest impartiality to the parties to the suit. The Delagosa Bay Company, which owns at present almost the whole of the shares of the Portuguese company, is in a position to contribute in a most decisive manner toward the carrying into effect of this perfectly legal appeal. The supposition, therefore, that the interests of the company are unprotected is absolutely groundless, on which supposition it thought, as may be presumed, that it was placed under the unavoidable necessity of having recourse to diplomatic intervention. The defense of those interests was, and still is, placed in the hands of those who can better and are, moreover, obliged to protect them—that is to say, the company itself. In the contract, from which His Majesty's Government have never swerved, except for the purpose of generously favoring the company—as will hereinafter be amply proved—in the laws of Portugal, and in the good will of His Majesty's Government—which these have invariably given it the most decisive proofs—the company would have found, and will still find, more than sufficient means for the effectual defense of the interests which it represents.

The supposition that the Delagosa Bay Company was formed with the full assent of the Portuguese Government must not be considered as hardly less void of foundation. His Majesty's Government were not called upon either to give or to refuse their assent to the formation of that company. The telegrams of the financial agent of the Portuguese Government do not prove at all any such assent. They merely prove that His Majesty's Government were aware, as they could not fail to be, that the new company was being formed and for what purpose, and they also prove the care taken by His Majesty's Government to notify, in order that the good faith of no one should be deceived, the laws and legal provisions by which the action of the company, when once formed in Portugal, would have to be bound and regulated. The declarations made by the Baron da Costa Ricci are both clear and positive. According to those declarations the Portuguese Government had, in the first place, nothing whatever to do with the formation of the Delagosa Bay and East Africa Railway Company and, consequently, were not in any way responsible for the statements and promises contained in its prospectus.


In truth, no document whatever can be produced in which a single word can be found amounting to an official recognition of the English company, or to an official assent having been given to its formation. On the contrary, the Portuguese Government have always and invariably only recognized the Portuguese company as legally existent. The concession was only made to it, and they have always and directly treated with it alone. It appears to me unnecessary to add anything further on this point.


Although the Government rescinded the contract on these strong grounds, nevertheless they did not, as alleged, confiscate the line and the materials belonging to the company; they only took possession, in accordance with the precise terms of the contract, of the whole of the property of the company, in order to act toward it, as they did invariably, in accordance with the clauses of the contract. For this purpose, it is clear, they based their action on article 42, but at the same time without infringing, as it is alleged they did, article 53. I have more than once officially recognized, in the name of the Government of which I am a member, the right of the company to appeal to the court of arbitration upon the question of the rescission of the contract of 1883, it being the intention of His Majesty's Government, as it could not fail to be, to respect the award, whatever it might be, and to cause it to be entirely carried into effect. The means to compel the Portuguese company to appeal, as it had the right to do, are, as I have already pointed out to your excellency, in the hands of the company, which will thus be easily able to refrain from having recourse to diplomatic intervention.

Nevertheless, it must not be in any way inferred from the above statement that His Majesty's Government are not willing to accept, as regards this pending question, a settlement which may conciliate the paramount interests which it is their duty to protect carefully and in equity the interests of the company on whose behalf Her Britannic Majesty's Government have, in the exercise of a right which is worthy of respect, thought proper to interfere.

With a view to this equitable and conciliatory settlement, it is the opinion of His Majesty's Government that the starting point can not but be from the firm conviction
that the Portuguese company still exists both de facto and de jure, which I have asserted more than once, and which I think I have proved in the course of this note, and also from the clauses of the decree which the Portuguese Government published on the 25th day of June last, under the full conviction of their right to act in that manner."

The Department further instructed Mr. Loring on November 30, in reply to his dispatch inclosing the answer of the Portuguese Government to the demand of the United States:

"The views of the Department, as expressed in its instruction of the 8th instant, are not modified by the note of Senhor Barros Gomes, of the 5th instant, which virtually admits the facts upon which this Government's opinion in respect to the confiscation of the railway is based. The offer of arbitration now held out to the Portuguese company, which has practically ceased to exist, is not the offer of arbitration contemplated by the concession to Colonel McMurdo. That concession provided for the arbitration of any difficulties which might arise between Colonel McMurdo and the company which he was to form on the one hand and the Portuguese Government on the other. Such a difficulty having arisen on account of the action of the Portuguese Government, that Government, instead of offering to submit it to arbitration, makes it a ground for the annulment of the concession and the seizure of the property acquired thereunder. But having thus annulled the concession, the Portuguese Government now appeals to its provisions as governing the rights of the contractors and investors. If the terms of the concession still bind those persons to the arbitration therein provided, they must also be held likewise to bind the Portuguese Government, and hence to require the resinding of the order of annulment and the restoration of the property to its owners, in order that such arbitration may take place. It is scarcely necessary to say that it is not within the power of one of the parties to an agreement first to annul it and then to hold the other party to the observance of its conditions as if it were a subsisting engagement."

On April 24, 1890, Minister Loring was instructed by telegram to "say to minister of foreign affairs that the Government of the United States will not permit the property of American citizens to be seized and appropriated by any other government. The rights of American citizens in the Delagoa Bay Railway can not be solely determined by a Portuguese tribunal. The United States will accept nothing less than an international arbitration of the real merits of the case, and will not allow the Portuguese company to be interposed so as to obstruct the ends of justice. Express the hope to the minister of foreign affairs that Portugal will take no steps which will produce unfriendliness between the two Governments."
and business there, and that he was the treasurer of said corporation, and until the 26th day of said month had possession of the treasurer's books of said corporation and acted as treasurer thereof; that between the said town of Usulutan and said city of Santiago de Maria there was during all that time a daily mail each way; that the mode of travel between said places was by riding on horseback, and the time necessary for the journey was about four hours; that he did not at any time receive any notice of a meeting of the directors of said corporation to be held or which was held on the 22d day of September, 1898, and did not know of said meeting until the 26th day of September, at which time Simon Sol, Luis Lopez, and C. Cochella came together to his place and demanded the treasurer's books of said corporation, informing him that said Cochella had been made treasurer in place of deponent, and thereupon he delivered the books to said Cochella.

Deponent further says that there is not truth whatever in the statement set forth in the extra-memorandum of the Republic of Salvador that Henry H. Burrell, president of said corporation, abandoned his office or abandoned the business of said corporation in the month of September, 1898, or at any time, but the truth is in respect thereto that in the month of September, 1898, said Henry H. Burrell, who was the general manager of said corporation as well as its president, and who lived at the said town of Usulutan, went to the city of San Salvador, the capital of said Republic, which is only about 100 miles distant from the said city of Santiago de Maria, upon business of said corporation requiring his attention there; that deponent knows the nature of business and the purpose of said Burrell's going to San Salvador at that time, because said Burrell conferred with him about it before starting, and telegraphic communication was had between him and said Burrell at different times during the stay of the latter at San Salvador concerning said business; that among the objects of the journey of said Burrell to said San Salvador was the executing of security to the bank calleu Banco Salvadoreno for the debt which said corporation owed said bank, and said Burrell did make the necessary arrangements with said bank and executed a mortgage for such security, which mortgage is the same that is referred to in document 4, Package D, security giving said contra-memorandum. Deponent recalls distinctly that upon this same journey said Henry H. Burrell went in company with Eugene Hoffman, who also resided at Usulutan.

Deponent further says upon his oath that he was not notified of the meeting of the board of directors held on the 14th day of October, 1898, but that, it coming to his knowledge by rumor at the port El Triunfo, where he was at the time that a meeting was about to be held, he went to the meeting at Santiago de Maria; that the meeting was held at the dwelling house of said Simon Sol, and there were present Messrs. Sol, Lopez, Cochella, Burrell, and deponent; and at the time Mr. Morales, an attorney, who appeared to be acting as the legal adviser of said Sol at the meeting; that in that meeting there was much discussion of the question whether said corporation should continue in business or should be put into liquidation, the said Sol, Lopez, and Cochella speaking in favor of liquidation and against continuing in business, and this deponent and said H. H. Burrell opposing liquidation, calling attention to the fact that the corporation was now in a condition to make money, that it had abundant resources to meet its present obligations, and especially calling attention to the fact that $90,000 gold par value of the stock of said corporation was still subject to call or assessment to the amount of 10 per cent, which would produce $20,000 silver at the then current premium. That all the current obligations of said corporation then existing and the expenses to accrue during the remainder of the year 1898 would not exceed $6,000 silver in the aggregate; and that there had been made large profits during the last previous shipping season, which begins annually about the 1st of January, or a little earlier, and extends to the month of June, and there was prospect of still larger profits in the current season, and that therefore it was entirely unnecessary to think of liquidation; and thereupon the said Burrell and this deponent urged that an assessment be levied sufficient to meet the immediate demands of the corporation and the current expenses for the remainder of the year; the said Burrell made a motion to that effect which this deponent seconded, but said Sol, who was acting as president of the meeting, refused to put the motion, saying simply it was unnecessary, that the corporation must go into liquidation. Thereupon said Burrell offered himself to advance money necessary to meet the current demands and carry the expenses until the shipping season, which was but a little over two months distant, but this was refused. Then Sol put to vote a resolution that said corporation should cease business and go into liquidation, with the result that Sol, Lopez, and Cochella voted for the resolution, and Burrell and this deponent voted against it. Lopez was the secretary of the corporation and seemed to be keeping the minutes of the meeting. If the minutes state that this deponent voted for liquidation they are absolutely false. The deponent and said Burrell opposed liquidation, both in discussing and in voting. This deponent and said Burrell remained at Santiago de
Maria until the next morning, when they made preparation to return to El Triunfo. The journey was to be made on horseback, and when they were ready to start and had the animals saddled, rode to the dwelling house of said Sol for the purpose of hearing the reading of the minutes of said meeting; that said Lopez pretended to read the minutes of said meeting, and read them as stating that this deponent and said Burrell voted against liquidation; and thereupon this deponent, without himself looking over the minutes, signed them and immediately left the room; but said Burrell refused to sign, saying as they were written in the Spanish language he feared there might be something in them which were not true, and he would decline to sign. This deponent and said Burrell then rode away.

This deponent further says upon his own personal knowledge that up to the time when he ceased to act as the treasurer of said corporation, as hereinbefore stated, that there had never been one moment's cessation or suspension of payment of the current expenses of or demands against said corporation; that the crew of the steamer Celia received their wages monthly, the month's wages always running from the 7th of one month to the 7th of the succeeding month; that the crew were always paid promptly at the end of the month, and that all had been paid at the end of the month which ended September 7, 1898; that the laborers working at the port of El Triunfo received their wages weekly, and all were paid up to the end of the last week before this deponent ceased to act as treasurer aforesaid; that Albert Hylton was check clerk of said corporation, and his wages were $125 silver per month, payable at the end of the month; that he had drawn his wages for all the time to the end of the last monthly period therefor preceding the time when this deponent ceased to act as treasurer, and at that time there was nothing due him, the month not being up.

This deponent further says that in the month of February, 1899, while Mauricio Meardi was in possession of the property of said corporation as receiver, in the course of a conversation with Meardi concerning the proceedings in bankruptcy against said corporation, Meardi said to this deponent that the port of El Triunfo having now been opened up by American money the Americans must be put out.

Dependent further says that in the month of September, 1899, while he was in the city of San Salvador, he had occasion to see and examine a bill of sale of the steamer Muñle, and that said bill of sale bore the name of the maker thereof as an English company, but of the company called Compania Sud Americana, which company was represented at San Salvador by an English gentleman named W. E. Caldwell, and that said bill of sale named as the grantees of said steamship M. Meardi & Co., which the bill of sale stated was represented in the transaction by Ramon Garcia Gonzales, an attorney of the city of San Salvador, who was one of the persons named as grantees in the concession made by the Government of Salvador on May 13, 1899, purporting to grant the same property and franchises which had been previously held by said Compania de El Triunfo Limitada. In said bill of sale it was also specified that said steamship Muñle was purchased for use in the transportation of cargo from the port of Triunfo to the high sea. This deponent recalls with great distinctness the said facts concerning said bill of sale, because he considered it very remarkable that the steamer should have been purchased by M. Meardi & Co. in their own right, and for use at said port, and that in the negotiations therefor M. Meardi & Co. should have been represented by said Gonzales, one of the grantees of the hostile concession. This deponent for that reason examined and reexamined said bill of sale, and immediately afterwards reported the facts concerning it as above stated to his principal, the Salvador Commercial Company, at Oakland, Cal.

This deponent further says that he was not at any time in the month of July, 1899, in the Republic of Salvador, but during all that time was at his home in the State of California; and that he never saw nor had any intimation of the existence of the order or writ alleged in the said contra-memorandum to have been made by the judge of the court of the first instance of Alegria, in said Republic, on July 5, 1899, until he saw the statement thereof in the said contra-memorandum in the month of January, 1901.

This deponent further says that he was present when Leopoldo Alejandro Rodriguez, at the city of San Salvador, made and signed the statement which is certified by Hon. John Jenkins, the American consul at said city, under date of January 1, 1900, and which is referred to in the reply of Salvador Commercial Company as the deposition of said Rodriguez; that said Rodriguez himself dictated said statement, and this deponent heard and saw the said consul administer to him an oath that the said statement was true, and said Rodriguez did then and there, in the presence of this deponent and said consul, swear to the truth of said statement. This deponent makes this statement, not supposing it will be denied that said statement was made under oath, but because the certificate of the said consul omits to state that the said deposition was sworn to.

And further deponent saith not.

Julius H. Ellis.
The foregoing deposition was subscribed by the deponent therein named in my presence, and was sworn to by him before me on the 16th day of March, A. D. 1901, at the city of Oakland, in the State of California, and I certify that he is a person of good standing and repute.

Witness my hand and official seal this the said 16th day of March, A. D. 1901.

J. H. CLAY,
Notary Public of the State of California in and for the County of Alameda.

CITY OF SAN SALVADOR,
REPUBLIC OF SALVADOR, CENTRAL AMERICA,
JANUARY 1, 1900—2 p. m.

Leopoldo Alejandro Rodriguez, resident and born in the city of San Vicente, in the Republic of Salvador, 30 years of age, by occupation attorney and archivist, being sworn to tell the truth in all that he expresses, deposes—that for five years past he has practiced his profession of attorney and archivist in the tribunals of this Republic; that in the month of February, 1899, he was employed by Julius H. Ellis, acting as agent and representative of a corporation of the State of California, United States of America, called the Salvador Commercial Company, to represent said company in the court of first instance of the district of Alegria in this Republic, in a proceeding then pending in that tribunal, in which had been pronounced an adjudication of insolvency and bankruptcy of a corporation of this Republic, namely, "La Compania de El Triunfo, Ltd.," and in which company the "Salvador Commercial Company" figured as the owner of the majority of the shares; that the purpose of the employment of this deponent and which he was instructed to carry into effect, if possible, was to procure the vacation of said adjudication of bankruptcy, on account of the proceeding not being founded on the laws of this Republic and on account of there not being any fundamental reason for the referred to adjudication, and to restore the company to its former state, thereby obtaining the removal of the receiver who had been appointed in said proceeding to the end that the property, assets, and franchises of said corporation so adjudged bankrupt be restored to it; that in the public document of power of attorney made by Mr. Ellis in conjunction with other shareholders of the "Compania de El Triunfo, Ltd.," before the attorney, Daniel Quiroz, the proceeding of the court of Alegria was energetically protested against, and said document demonstrated and proved the illegality of the adjudication of bankruptcy, all of which was founded upon the substantive laws and according to the proceedings established by such cases in this Republic, which public document the deponent presented to the judge of first instance of Alegria, accompanying same with a writing by which the deponent strengthened the statements in said document, with reference to declaring the vacation of the suit, on account of its treating upon absolute nullities; that upon the receipt of the writing and public document by the court of the district of Alegria said tribunal ordered that said documents be attached to the records or acts, not deciding anything with reference to the alleged nullities and to the incorrectness of the proceedings; that it was impossible to obtain any fundamental decision in said tribunal for the definite arrangement of the referred to bankruptcy from the 10th of October, 1899, the day it was declared bankrupt, until date, the deponent being unable to find out the reason why they did not hear his petition nor why they did not continue the bankruptcy suit with the object to finish same and to come out in that manner from the state of indecision in which the things are found at present, so that his representatives might know to what they should abide by; that all which he has said is the truth, and he knows it to be the truth on account of the knowledge which he has of the case which he knows from sight and from the knowledge which he has of the laws of this country, signing for proof.

LEOPOLDO A. RODRIGUEZ,
CONSULATE OF THE UNITED STATES,
SAN SALVADOR, JANUARY 1, 1900.

I, John Jenkins, consul of the United States at San Salvador, do hereby certify that the signature of Leopoldo A. Rodriguez, at the foot of the paper annexed, is his true signature, made and acknowledged in my presence, and that said Leopoldo A. Rodriguez is personally known to me, and of good repute as a man of truth.

In witness whereof I have hereunto set my hand and affixed the seal of the consulate at San Salvador this day and year next above written and of the Independence of the United States the one hundred and twenty-third.

JOHN JENKINS,
Consul of the United States.
John P. Irish, being duly sworn, deposes and says: That he is a citizen of the State of California, and is and has been since February 17, 1894, the naval officer of customs in the revenue district of San Francisco, Cal., and that he was the naval officer of customs at San Francisco on the 11th day of September and the 30th day of September, 1899; and he further deposes and says: That as such naval officer of customs it is by law made a part of his duty to enter and clear all ships and vessels that enter said port of San Francisco and depart therefrom, and that of his own knowledge he deposes that the Salvadoran steamer *Maule* from Triunfo, Salvador, was entered at said port of San Francisco, on the 11th day of September, and was cleared therefrom on the 30th day of September, 1899, with cargo for Triunfo and other ports in the Republic of Salvador; and further deponent saith not.

John P. Irish.

Subscribed and sworn to before me this 21 day of April, 1901.

George D. Brookes,
Notary Public in and for the City of Washington, D. C.

Señor Zaldívar to Mr. Hay.

LEGACIÓN DE EL SALVADOR,
Washington, October 30, 1901.

Sir: Referring to the matter of the claim of the Salvador Commercial Company of California against the Republic of Salvador pending in the Department of State, I am authorized by my Government to make the following communication:

In accordance with the spirit of amity which prevails both in the United States and in the Republic of Salvador, several attempts have been made to adjust this claim amicably and satisfactorily, efforts which have failed through no fault of my Government. Regretting this result and being desirous of maintaining our present close friendship with the Government of the United States and desirous that justice be done in the premises, my Government suggests the adoption of some course which shall finally and justly determine the differences which have arisen in respect to this claim.

Animated, therefore, by the spirit of that principle which prevails among nations to adjust all differences by reference to a tribunal of arbitration, which principle has always been steadfastly upheld by the Government of the United States, the Government of Salvador, through me, proposes that the claim of the Salvador Commercial Company be submitted to an impartial international board of arbitration, the decision of which shall settle finally the respective rights and responsibilities and the direct damages suffered by either party.

Fully convinced that this proposal of my Government will be accepted by the Government of the United States, in accordance with its oft-proven sense of justice and right,

I have, etc.,

Rafael Zaldívar.
Protocol of an agreement between the United States of America and the Republic of Salvador for the arbitration of certain claims against Salvador, signed at Washington, December 19, 1901.

Protocol of an agreement between the Secretary of State of the United States of America and the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Salvador for submission to arbitration of the claims against the Republic of Salvador of the Salvador Commercial Company and other citizens of the United States, stockholders in the corporation styled "El Triunfo Company, Limited," who have not acquired their stock from citizens of Salvador or others not citizens of the United States since the date of the filing of the memorial of the Salvador Commercial Company.

The United States of America and the Republic of Salvador, through their representatives, John Hay, Secretary of State of the United States of America, and Don Rafael Zaldívar, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Salvador, have agreed upon and signed the following protocol:

Whereas, the United States of America, on behalf of the Salvador Commercial Company and of any and all of its citizens as described above, claim indemnity from the Government of Salvador for damages alleged to have been caused to such stockholders, as mentioned either in said Memorial, in the correspondence between the two Governments or in the report of the Solicitor of the Department of State, made to the Secretary of State; and

Whereas, the Government of Salvador denies any liability either to the Salvador Commercial Company or to any such citizens by reason of the acts and alleged grievances above referred to;

It is therefore agreed between the two Governments:

I.

That the said questions of law and fact brought in issue between the two Governments shall be referred to the decision of the Honorable Henry Strong, Chief Justice of the Dominion of Canada; the Honorable Don M. Dickinson, of Detroit, Michigan; and the Honorable Dr. David Castro, Chief Justice of the Supreme Court of Salvador, whose award in writing and stating the grounds of the decision shall be final and conclusive.

II.

The arbitration tribunal shall sit at Washington, D. C., and shall hold its first session not later than the first day of April, 1902. A majority of the arbitrators shall be competent to act as well as to decide on all matters and questions submitted to the arbitral tribunal. Should either said Strong, Dickinson or Castro be unable to serve as arbitrator, in that event the place of the former shall be filled by agreement of the two Governments and of either of the two latter by the United States and Salvador respectively.
That within eighty days from the date of the signing of this protocol, each party shall furnish to the other and to each of the arbitrators a copy of the said Memorial and copies of all the documents, papers, accounts, official correspondence and other evidence on file at their respective Foreign Offices relating to said claims, and of all affidavits of their respective witnesses relating thereto, and the Department of State of the United States shall include among the documents thus transmitted by it copies of the report of its Solicitor in said case; and each party shall furnish in the manner aforesaid all books of account, contracts and papers of the "El Tríunfo Company Limited" which may be in its possession or control: Provided, That said arbitration tribunal may request either Government to furnish such additional evidence as it may deem necessary in the interests of justice, and each Government agrees to comply with said request; it may, also, in its discretion, allow all such pleadings to be filed as may be conducive to the full presentation and trial of the claims of the interested parties.

The arbitration tribunal shall have full power to regulate the procedure and to take such action and make any such order as it may find necessary in the interests of justice. Each Government agrees to abide by such determination, and in default thereof, the said tribunal may proceed in such manner and at such times as it may determine, in order to close the proofs and make final and complete award. It shall also have power to appoint such officials to render such clerical and other assistance as it may find needful, and fix the stipend therefor, as well as to provide for payment by the parties of all expenses incident to the arbitration.

Each of said Governments by their respective counsel, and the said stockholders by their attorney, may orally argue said cause and may severally submit to the said tribunal written arguments, copies of which shall at the same time be furnished to counsel of the other parties, with the right to reply, touching the questions of law and fact in issue, within thirty days from the date limited for the submission of the evidence; but the said tribunal shall not for such purpose in any event delay its decision beyond two months from the date of the submission to it of the evidence aforesaid, unless for good cause said tribunal shall find a longer period necessary, which shall in no event exceed three months.

If said tribunal finds that any liability is established, it shall have full power to grant complete, just and legal relief to the parties; the damages awarded shall be fully compensatory but shall not include any which are merely speculative or imaginary. The tribunal may also pass upon the right of claimant to recover costs and reasonable attorney's fees and the award may bear interest at the rate of six per cent. per annum from the date when the damages are shown to have occurred. It shall bear interest at the rate of six per cent. per annum from the date of its rendition until paid.
VII.

The award, if any, shall be payable, in American gold, as soon as the National Assembly of Salvador shall authorize the payment; but said authorization shall be made at its next ensuing regular session, in February, 1903. An extension of the time of its payment may be granted by the Government of the United States.

VIII.

Reasonable compensation to the arbitrators for their services and all expenses incident to the arbitration shall be allowed and paid in equal moieties by said Governments.

IX.

This protocol shall be submitted for approval and ratification by the Congress of the Republic of Salvador. When so approved and ratified, the Government of Salvador will immediately notify the Government of the United States thereof. Unless so approved and ratified and such notice is given by the Government of Salvador on or before March 1st, 1902, this protocol shall be deemed null and void; and the United States will be at liberty to proceed diplomatically.

Done in quadruplicate in English and Spanish at Washington, this nineteenth day of December, 1901.

John Hay
Rafael Zaldivar

Award of arbitrators.

IN THE MATTER OF THE ARBITRATION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF SALVADOR.


Certain differences having arisen between the United States of America and the Republic of Salvador as to the liability of the last-mentioned Republic to pay an indemnity for the loss sustained by certain citizens of the United States, namely, the Salvador Commercial Company, H. H. Burrell, Luis Maslin, J. H. Ellis, J. B. Hays, and G. P. Thompson, by reason of the action of the Government of the Republic of Salvador in respect of the practical destruction or cancellation of a franchise or concession granted by the Republic of Salvador to certain persons, subsequently duly acquired under the laws of Salvador by a body corporate named and styled "El Triunfo Company, Limited," of which corporation the said Salvador Commercial Company, a corporation created under the laws of the United States, and
whose corporators are citizens of the United States, and other American citizens were the principal shareholders; which said franchise or concession granted for the period of twenty-five years the exclusive privilege to establish in the port of El Triunfo steam navigation, and to carry on coasting trade with adjacent ports, to establish a line of steamers to connect said port of El Triunfo with certain other ports on the Pacific coast of Central America, Colombia, Mexico, and California; with other valuable privileges and powers, and exemptions from governmental liabilities, all as more fully and at large appear in the said franchise or concession, duly executed as a bilateral contract by the grantees thereof, as well as by the executive officers of the Republic of Salvador, on the sixth day of October, in the year of our Lord one thousand eight hundred and ninety-four, and duly ratified in accordance with the constitution of the said Republic by the supreme legislature thereof on the nineteenth day of April, in the year of our Lord one thousand eight hundred and ninety-five, to which reference is hereby had and made; as well as to the construction of the said franchise or concession given by the formal act of the executive of the said Republic on the seventh day of November, in the year of our Lord one thousand eight hundred and ninety-four, wherein and whereby the said franchise or concession was declared to embrace and cover the entire Bay of Jiquilisco.

And it having been found impossible to adjust the said differences by diplomatic negotiation, it was agreed by the said United States of America and the Republic of Salvador to refer the said disputes to the arbitrament and award of the Right Hon. Sir Henry Strong, chief justice of Canada; the Hon. Don M. Dickinson, of the United States, and the Hon. Señor Don José Rosa Pacas, LL. D., of the city of Santa Anna, in Salvador, who, having taken upon themselves the duty of hearing and determining the said differences, do now, in accordance with and by the powers and under the terms of the protocol of the agreement between the said Governments in respect of the said claims, signed at Washington on the nineteenth day of December, in the year of our Lord one thousand nine hundred and one, and after having read and considered the evidence and documents produced by the parties, respectively, and after having heard the parties by their counsel, and after due consideration, proceed to make their award as follows:

That is to say, the said Señor Don José Rosa Pacas, differing from the other arbitrators aforesaid, doth adjudge, award, and determine that the Republic of Salvador is not liable in any way to the said United States in respect of the said claims or to the said claimants; but the said Sir Henry Strong and Don M. Dickinson, being a majority of the said arbitrators, do award, adjudge, and determine that the said Republic of Salvador is liable to the United States for the benefit and behoof of the said Salvador Commercial Company and the other American citizens named in the second schedule to this award annexed in respect of the said claims in the amount of five hundred twenty-three thousand one hundred seventy-eight and 64/100 dollars in gold coin of the United States, to be paid with interest at the rate of six per centum per annum from the date of this award until the said amount is paid at the time and in the manner specified in the protocol of submission; and the said two last-named arbitrators do award and declare that the sum of five hundred twenty-three thousand one hundred seventy-eight and 64/100 dollars so awarded to be paid to the United States is made
up and composed of the several sums or items set forth in the first
schedule to this award; and the said two last-named arbitrators do fur-
ther declare that the said sum so awarded is in respect of the claims of
the said claimants, being American citizens, as set forth in the second
schedule to this award; and the said two arbitrators who make and
sign this award do, in conformity with the requirements of the pro-
tocol or agreement of submission, state the grounds of their decision
to be that the concession of franchise granted by the Republic of Sal-
vador, and which became vested in the El Triunfo Company (limited),
was arbitrarily and unjustly revoked, destroyed, and cancelled by the
Republic of Salvador, as they have more fully explained in a joint
opinion signed by them.

In witness whereof, the said Sir Henry Strong and the Hon. Don
M. Dickinson, being a majority of the said arbitrators, have signed
declared, and published this their award at the city of Washington this
eighth day of May, in the year of our Lord one thousand nine hundred
and two, the said Señor Don José Rosa Pacas declining to sign the
same.

HENRY STRONG.
DON M. DICKINSON.

This is the first schedule referred to in the within award:

536/100th parts of $750,000, value of the concession and franchise
destroyed and annulled by the Government of Salvador .......................... $402,000.00
536/100th parts of $28,956.87, the value of the steamer Celia, lost
through the action of Salvador ........................................................................... 15,522.56
536/100th parts of $45,000, the value of the property of El Triunfo,
taken by the Government of Salvador ................................................................. 24,120.00
The expenses of the Salvador Company in endeavoring to secure restora-
tion before intervention by the United States .................................................. 2,671.31
Expenses of prosecuting the claims, exclusive of attorney and counsel
fees ........................................... 18,864.77
Attorney and counsel fees ................................................................................ 60,000.00

Total amount of award ..................................................................................... 523,178.64

The above schedule contains a statement of the several sums or items
of claim of which the sum of five hundred and twenty-three thousand
one hundred and seventy-eight and $44 dollars by the award directed
to be paid by the Republic of Salvador to the United States is composed,
made up, and allowed.

In witness whereof the two arbitrators concurring in the award
have hereto set their hands this eighth day of May, A. D. 1902.

HENRY STRONG.
DON M. DICKINSON.

This is the second schedule referred to in the within award showing
the American corporation and American citizens in respect of whose
claims the indemnity mentioned in the said award is awarded and the
amount awarded and attributed to each of the said claims, respectively,
that is to say:

(501 shares) The Salvador Commercial Company and expenses as shown
in Schedule 1 ........................................................................................................... $494,330.53
(5 shares) H. H. Burrell ....................................................................................... 4,119.98
(10 shares) Luis Maslin ....................................................................................... 8,236.66
(3 shares) J. H. Ellis .......................................................................................... 2,471.97
(2 shares) J. B. Hayes ....................................................................................... 1,547.96
(15 shares) G. F. Thompson ............................................................................... 12,356.54
In witness whereof Sir Henry Strong and the Hon. Don M. Dickinson, two of the arbitrators, have set their hands this eighth day of May, A. D. 1902.

Henry Strong.
Don M. Dickinson.

In the matter of the arbitration between the Republics of the United States and Salvador.

In respect of the claim of the Salvador Commercial Company and other citizens of the United States, stockholders in the corporation which was created and existent under the laws of Salvador, under the name and style of "El Triunfo Company, Limited."

Opinion of Sir Henry Strong and Don M. Dickinson:
This controversy has its origin in schemes to establish and develop a new port on the Pacific coast of Central America, in the Republic of Salvador, on the Bay of Jiquilisco.

For years, as the greatness of the natural resources of Salvador had been discovered and understood, the attention of capital, both foreign and domestic, had been directed to the subject of founding another, and, as was hoped, a better port for the purposes of commerce, and one to which the larger and richer resources of the Republic, both in agriculture, including cotton and tobacco, its rich woods, and its mineral wealth, might most economically be made tributary, and which should also be a port of distribution for imports.

As early as 1850 the Bay of Jiquilisco, in connection with this subject, had been brought to the attention of the investing world by well-known writers, whose positions and residence in Central America made their statements impressive. In these statements the Rio Lempa, as "the most important natural feature of Salvador," in connection with its proximity to estuaries of the Bay of Jiquilisco and the great advantages of a port which might be established on that bay, were pointed out.

Prior to the exploitation and development of the concession involved in this case, substantially the only ports of the Republic for commercial purposes had been those of La Libertad Acajutla and La Union, neither of which had certain commercial advantages that would appertain to a new port if established in Jiquilisco Bay, and all of which were subject to objections as seaports which at the new port would be obviated.

As time went on and knowledge of the conditions and of the possibilities of the development of the country became more widespread interest in the subject increased. The Government of Salvador, however, had never undertaken the improvement of the harbor within or the ship entrances to Jiquilisco Bay.

In the late summer or fall of 1894 contesting petitions were presented to the Government of Salvador for a concession of the right, for a period of years, to establish steam navigation in the port of El Triunfo, setting forth the details of the proposed enterprise. One

---

Squires, Central America.
application was presented by Simon Sol, Luis Lopez, and Lorenzo Campos, and the other by Henry H. Burrell and George F. Thompson, citizens of the United States, and Gustavo Lozano and Emeterio S. Ruano, citizens of the Republic of Salvador. The proposals were published in the official journal of the Republic by the proper executive department of the Government, and bids were invited for the franchise so sought.

These proceedings resulted in the awarding of the franchise or concession to the Burrell party, and on October 6, 1894, the Republic of Salvador granted them, for the period of twenty-five years, the exclusive right of steam navigation of the port, together with certain valuable privileges and as valuable exemptions. The grant was in the form of a bilateral contract, signed by the executive officers in behalf of the Government of Salvador as party of the one part and by the grantees as party of the other part.

On November 7, 1894, to forestall any possible misunderstanding or narrower construction in future as to the extent of the concession the President of the Republic officially construed the contract as covering the entire Bay of Jiquilisco.

The constitution of Salvador requiring that such a concession must be submitted to the supreme legislature for ratification, it was so submitted and ratified by that body on April 15, 1895.

There can be no doubt that the privileges conferred were of very great value, but in turn there were most onerous reciprocal obligations.

The grantees' privileges were exclusive as to steam navigation of the port to connect with any line of steamers then in existence or which might thereafter be established, and to transship passengers, products, and merchandise which should be exported through the port, to carry on the coasting trade with adjacent ports, to establish a line of steamers to connect with other ports of Central America, Colombia, Mexico, and California.

And not only did the exclusive privileges apply to the port of El Triunfo but they were attached to such other places on Jiquilisco Bay and its estuaries as the company might establish for embarkation and debarkation and for the export of the natural products of the country.

The grantees were given the right to import, free of duties and taxes, all materials necessary for founding, constructing, and maintaining all works pertaining to the enterprise; exemption from taxes on all their property, franchises, and operations; exemption of their employees from military service; exemption from the use of stamped paper and revenue stamps in making contracts within the scope of the business, and the free use of the telegraph and telephone lines operated by the nation. The Government further agreed to do its utmost to keep the roads open between the port of El Triunfo and the coffee centers of the department of Usulutan—the department or municipal subdivision in which Jiquilisco Bay was situated.

But the grantees of the concession or contract executed, as we have seen, on October 6, 1894, were required by its terms to have in readiness by March 1, 1895, such facilities at the port of El Triunfo as would enable them to handle and ship through the port the coffee crop of the year 1895, and, furthermore, that during that year, unless prevented by unforeseen emergency or superior force, they must have the
traffic definitely established, together with the construction and furnishing of a building for a Government custom-house not less than 60 baras (165 feet) long, with offices for the customs collector and his employees, and for the telegraph and telephone line, to be constructed wholly by the grantees at their own expense, and that such building and its furniture were to belong to the Government as of its own property; together, also, during that year, with the construction of such other buildings and other works the company might consider necessary for its own use, and the construction of a pier of iron and steel having the necessary conditions of strength and convenience for embarkation and disembarkation of freight and passengers, the construction of which was to be under the inspection of the Government, in order to assure compliance with the conditions of strength and convenience. 

The pier also was to be the property of the Government, and the grantees were to provide steamers, steam tugs, launches, and such other boats as the traffic should require. The concession also required the procuring and placing at the expense of the grantees of such buoys as should be necessary to mark the entrance to the port, together with the erection of a light-house to indicate the entrance if the Government should deem it necessary.

It was provided, too, that the company should carry without charge the high officials of the Government, and all its employees when traveling by order of the Government; all materials of war and merchandise which the Government might embark by means of the company, if the property of the Government. The grantees were to carry correspondence by mail between the port and wherever they might have steamers plying, and were to give free pilotage to Government ships when entering or departing from El Triunfo, and were to pay $1,300 per year, silver of the country, in monthly payments, during the entire twenty-five years. The tariffs to be imposed by the grantees, both for passengers and freight, for embarking and disembarking, were also to be approved by the Government.

The concession also required that the grantees should form a corporation to take and operate the concession.

Thereupon, on October 25, 1894, that corporation was formed, and is called throughout the case El Triunfo Company, Limited. The capital stock of the corporation was divided into 1,000 shares.

This capital stock was acquired and distributed as follows: the Salvador Commercial Company, a corporation created and existing under the laws of the State of California, which, as clearly appears by the record, was the moving projector and spirit in the enterprise of developing the port of El Triunfo and in acquiring the concession, took a majority of the stock, that is to say, 501 shares. Henry H. Burrell, who was made the president of El Triunfo Company, and who was an American citizen, acquired and held 5 shares. Julius H. Ellis, who became the secretary of El Triunfo Company, and who was an American citizen, acquired and held 3 shares; J. B. Hays, an American citizen, 2 shares; Luis Maslin, an American citizen, 2 shares, and George F. Thompson, an American citizen, 15 shares, so that the total shares held by citizens of the United States in El Triunfo Company were 536 in number.

It is apparent that upon the execution of its contract with the Salvador Government, through which the concession was acquired, and upon the formation of the corporation required by the concession, El Triunfo
Company entered upon the preparation and development of the port, and the performance of the requirements imposed upon it, with exceptional enterprise and vigor.

The concession having been granted on October 6, 1894, and the corporation having been formed with its American representation within nineteen days thereafter, there being no nucleus at the port or even the beginning for a dock, or a known ship harbor within Jiquilisco Bay, it did, nevertheless, within four months and four days from the date of its incorporation—that is to say, on March 1, 1895—through many difficulties and embarrassments naturally incident to the initiation of such an enterprise, have that port ready, with sufficient equipment of every description to move and ship the coffee crop of 1895, and did ship that crop.

It is worthy of comment and deserving of consideration, in view of subsequent events, that this work was done under such circumstances, when in addition to the difficulties attendant upon every entirely new enterprise, requiring conception and creation from the beginning, it was also done in the face of the fact that the supreme legislature of the Republic of Salvador, from the date of the concession until the port was equipped and ready for business on March 1, 1895, had not ratified the concession or contract under which the work was done, and did not ratify it until April 19, 1895, so that the money was raised and the port practically created with no certainty that the grantees of the concession would ever receive the right to hold it or the value created by them by their work and expenditure in the port of El Triunfo.

There can be no doubt on this record that the company pushed forward the work of permanent equipment from March 1, 1895, with the same vigor and enterprise as had been displayed in the preparation for the shipment of the crop of the year 1895; for within one year and twenty-seven days from March 1, 1895, we find the president of the company reporting to the Government the entire completion of the permanent work and a full compliance with the contract on the part of those to whom the concession had been given.

This report was true, and this statement does not rest in any degree upon the testimony of the president or that given by or in behalf of the claimants, but upon the reports of the proper officials of the Government of Salvador, viz, its inspector-general, its secretary of the treasury, and its secretary of public works, who all report the completion of the enterprise in accordance with the contract, and a full compliance with their obligations in that regard by the grantees of the concession.

The grantees of the concession did much more.

Beginning at once upon the grant of the concession, and even before its ratification by the supreme legislature of Salvador, they brought about, by persistent efforts and powerful influence upon the Government of the United States, a hydrographic survey of the entrance and harbor at this port by the authorities and instrumentalities of that Government. The ships of the United States began to arrive at the port in the month of December, 1896, for this purpose, and their survey, prosecuted continuously thereafter at a cost, as claimed by the record, of $100,000 in gold, established the fact that the port of El Triunfo was one of the best and safest on the Pacific.

The official chart of the entrance and of the whole bay was issued by the Hydrographic Office of the United States, the depth of water on
the bar was shown at high and low tide, the ample width and the
straightness of the channel were demonstrated, as well as the fact that
the distance across the bar was but a few hundred feet, and that the
water in the channel inside the bar and throughout the entire bay was
of entirely sufficient depth for the largest vessels.

As to establish the port it was essential that the safety of vessels
entering and departing should be assured, there was probably nothing
which could add so much to the advantage of the Government of
Salvador, a maritime country, in respect of its commerce tributary to
the interior, as this survey by the United States. Clearly it was a
permanent addition and increment to the resources and wealth of the
nation, and this was brought about almost wholly by the enterprise and
energy of the American citizens who entered upon the enterprise of
developing the port of El Triunfo, and was so added without any legal
obligation to do so resting upon them by the contract or concession of
October 6, 1894, or otherwise.

A very large amount of testimony has been presented to the arbi-
trators by the opposing sides in this controversy bearing upon the his-
tory of El Triunfo Company and its affairs and management from the
beginning of its operations to the closing of the port of El Triunfo
by the executive authority of Salvador in February, 1899. It has
been the effort of counsel for Salvador to show at this hearing that
the company did not comply with the terms of the concession, either
before or after the reports of the executive officers of the Govern-
ment showing the completion of the preparation and equipment of
the port for carrying on the business, as required by the concession.

It is of course obvious that the Salvador Government should be
stopped from going behind those reports of its own officers on the
subject and from attacking their correctness without supplementary
evidence tending to show that such reports were induced by mistake
or were procured by fraud or undue influence. No evidence of this
kind is introduced. But were it otherwise, after the most careful and
painstaking consideration of the evidence we are unable to discover
anything in the record having any proper tendency to show any sub-
stantial or material failure of the company in this regard.

Having expended the necessary capital, and having received the
official approval of the Government of compliance with the concession,
it is still contended by Salvador that in the details of the management
of its affairs and of the port, and in carrying on the business com-
mited to it with the means it had provided, the company did not fully
and in good faith perform its duty in its administration of the affairs
of the port under the powers and privileges granted and in accordance
with its liabilities under the concession.

From the beginning of 1896 to the autumn of 1898 it is evident to
us, from the entire record, that the volume of business which came to
this port after it was equipped and opened by El Triunfo Company
was even larger than anyone, the most sanguine of the investors and
believers in the profitable future of the enterprise, had anticipated.
They had expected success. This induced the investment, encouraged
and spurred on the spirit of enterprise which accomplished so much
under the circumstances as hereinbefore detailed within the short
period from October, 1894, to March 1, 1898, and in the year follow-
ing, by the completion of the permanent improvements.

But it is not to be wondered at that the rapid increase of business,
necessarily unanticipated to a degree, should have strained to some extent the capacity of the first equipment and facilities provided to handle the business. As in all new ventures, the means and methods at first adopted were necessarily to a degree experimental. The distances from other and settled points of supply necessarily had to be met, and difficulties arose in getting skilled labor for the handling of the various kinds of products and merchandise, for additions and repairs to buildings, for the manning of ships, as well as in getting common laborers promptly, as the work increased beyond expectation.

The correspondence in evidence shows many such embarrassments which were surmounted. Promptness and evenness in the transaction of the business of the port could hardly be expected under the circumstances. But with all this it can not be said, as now here claimed by the Government of Salvador, that there was any such failure in the performance of its obligations in the circumstances of the case as would have justified or sustained a complaint for a breach of contract in a court of justice if this franchise had been a contract between private parties. Much less was there any such breach of contract on the part of El Triunfo Company at any time as would have justified a forfeiture of a dollar in damages against the company, or of a right granted it under the concession.

The complaints, when examined and analyzed, were few and insignificant. That the company met and overcame such emergencies as necessarily arose is shown by the fact that although the business from the fall of 1895 to the middle of 1898, a period of less than three years, increased in the matter of shipments alone to the extraordinary amount of between four and five hundred per cent., yet the facilities and equipment, as supplemented, improved, and provided, were not overwhelmed by this increase and on the whole were substantial and well kept up.

Naturally no profit was shown in the years 1895, 1896, and 1897, but the tendency to the meeting of both ends was certain from the beginning and increased with added momentum, demonstrating the future greatness of the enterprise, until, from the beginning of the year 1898, a steady balance of net profits was shown as long as the company operated, which was half the year, aggregating at the end of that time, according to the testimony introduced on behalf of Salvador by that Government's official accountant, the sum of $17,000 over and above all losses and expenses of every kind, and according to the testimony introduced in behalf of the Salvador Commercial Company a much larger amount.

There can be no doubt that the record proves to a demonstration that the enterprise, which may properly have been considered an experiment up to the beginning of 1898, although it had shown an improving financial condition from the beginning of its business, was an assured financial success, equaling if not exceeding the most sanguine expectations of its promoters by this showing of profits on the steadily increasing business at the close of the first half of that year. A careful examination of the voluminous evidence in the case shows that from March 1, 1895, to the close of the first half of 1898 the percentage of gains on expenses and losses regularly increased at the rate of about 33\(\frac{1}{3}\) per cent per annum.

It is clear to our minds that as soon as the success of the enterprise was so demonstrated, and its future as an exceptionally paying enter-
prise was assured, an intrigue commenced within the company, whose
object was to oust the management and control the American interests
and to wrest the concession from their hands and to appropriate it and
the entire investment of the American shareholders for the benefit of
the conspirators. There can be no other reasonable explanation of
the events that now rapidly followed the stage of its affairs where the
showing of profits and the percentage of increase promised such large
returns for the future.

At the annual meeting of the shareholders, held on June 10, 1898,
a full board of directors was elected, including Burrell and Ellis and
Simon Sol, who had been one of the competitors for the concession
as against the Burrell interests when it was granted in 1894. On the
same day the board of directors met and organized, reelecting Burrell
president, Sol as vice-president, and Ellis as treasurer. At the next
general meeting of the shareholders, held on July 31, 1898, one of
the Salvadoran directors resigned his office as director and secretary,
and Luis Lopez was elected to fill the vacancy.

It may be of significance in passing that this is the same Luis
Lopez who, joining with Sol, was a competitor for the franchise as
aforesaid as against the American or Burrell party in 1894. At the
meeting of directors held on this same day this same Luis Lopez was
appointed secretary of the company.

In September, 1898, while the president of the company was at the
city of San Salvador on its business, Sol assumed the office of presi-
dent by clear usurpation and without any authority whatever, and
without notice to Burrell or Ellis assumed to hold a meeting of direc-
tors at his own house in Santiago de Maria, at which the only attend-
ants besides himself were the said Lopez and one Cochella, and then
and there passed a resolution removing Burrell from the position of
president and putting himself in his place, and removing J. H. Ellis
from the position of treasurer and putting Cochella in his place; so
that the three, Sol, Lopez, and Cochella, the only attendants of the
said alleged meeting, became by their own act the president, secretary,
and treasurer of the company. Burrell received no notice of this
meeting within time to reach it, and Ellis received no notice at all.
These proceedings were clearly fraudulent and void, as shown by the
record.

On October 14, 1898, another so-called meeting of the board of
directors was held, which was assumed to be an extraordinary or spe-
cial meeting, according to the minutes. This meeting was attended
by Burrell and Ellis, although they received no notice of it; but hav-
ing casually heard of it, in an endeavor to protect the interests of the
American investors whom they represented, presented themselves.

Motions were offered by them in proper form at this meeting, and
Sol, acting as president, refused to put the motions. Without detail-
ing further the wholly illegal character of the meeting and of its pro-
ceedings, and the falsity of its minutes, the fact may be stated that
under its proceedings a petition for adjudication of the bankruptcy of
the company was authorized, and almost immediately filed in the
court of first instance at Santiago de Maria, under the authority of the
said alleged directors. Promptly following, on October 19, five days
after the so-called meeting was held, a form of adjudication of bank-
rupctey was made by the court, and one Meardi was appointed receiver
and custodian of the property and effects of the company.
This receiver at once possessed himself of all the books, papers, vouchers, and correspondence of the company and its officers, and these were withheld from the American investors and from their representatives. From that time free access to these papers was wholly denied them until after these proceedings were pending in Washington, and even then large quantities of such papers were never produced for their inspection. Immediately following this proceeding Ellis and Burrell, the sole representatives of the American capital invested in the company, were driven from Salvador in fear of their lives.

The Salvador Commercial Company and the other American investors in this enterprise, who had pushed it to success, were far away in California, unaware of these proceedings or any of them, but at the earliest time after they received advice of them they took measures to undo the transactions of the conspirators. In the meantime a civil war broke out in Salvador, throwing everything into confusion. A successful revolution was inaugurated, and by it the existing administration was overthrown. But as soon as it was possible under the circumstances representatives of the Salvador Commercial Company came to the Republic and undertook to have the acts of the conspirators vacated, the company rehabilitated by the action of its stockholders, all to the end that the proceedings in bankruptcy might be set aside and the directorate chosen by them reinstated in the management.

The bankruptcy proceedings were, in our opinion, the result of a fraudulent conspiracy, which successfully imposed upon the court in which the proceedings were taken. On February 12, 1899, in order to move in the only proper legal manner for the restoration of the company's rights and its rehabilitation by turning out the conspirators and installing a representative directorate to move in the matter, a meeting of the shareholders was called, to be held on February 28, to concert measures for these purposes. The call for the meeting was published in the official journal of the Republic on February 13, 1899.

On the day following the president of the Republic issued an edict closing the port of El Triunfo against all importations. Thus was the first step for relief met, thus was the concession stricken down and practically canceled and destroyed, and thus every effort of its owners and the American shareholders to extricate it from the results of the fraudulent manipulation of the conspiracy was paralyzed.

The Salvador Commercial Company presented to the Government its solemn protest against this decree. Every effort was made by the representatives of the American shareholders to obtain its revocation. All were in vain, and on May 18 the executive granted a concession to others, citizens of Salvador, of everything that had been covered by the franchise and concession of October 6, 1894. The owners of the American interests presented their solemn protest to the executive against this grant, but no attention was paid to it or to them.

Then followed the appeal of the American citizens interested to their Government for its intervention for their protection and for reclamation.

In view of this history it need hardly be said that the evidence discloses that at the time the proceedings in bankruptcy were taken by the false and fraudulent representatives of this company no creditor had complained and no creditor had a just cause of complaint against it for nonpayment of its debts. On the contrary, its complete finan-
cial success and the certainty of its prosperous future had been but then completely assured.

It is claimed that the United States can not in this case make reclamation for its nationals, the shareholders in El Triunfo Company who had thus been despoiled, for the reason that such citizens as so invested their money in the Republic of Salvador must abide by the laws of that country, and seek their remedy, if any they have, in the courts of Salvador; and, moreover, that before reclamation can be successfully urged against Salvador in their behalf it must be shown that such citizens of the United States, having appealed to the courts of the Republic, have been denied justice by those courts.

The general proposition of international law as thus stated is not denied.

If the Government of Salvador had not intervened to destroy the franchise and concession of El Triunfo Company, and thus despoiled the American shareholders of their interests in that enterprise, an appeal might have been, as it was evidently intended to be, made to the courts of Salvador for relief from the bankruptcy proceedings. The first step to that end would be the turning out of the conspiring directors and the installment of a proper directory by the supreme authority of the corporation, the shareholders' meeting.

But by the executive decrees, rather than by the bankruptcy proceedings, the property rights of the American citizens involved were irrevocably destroyed.

Seeking redress through a called meeting of the shareholders of the company, the moment the call was issued, and it appeared that the proper remedy was to be sought by the corporation itself, showing that the proceedings by its alleged representative directors for bankruptcy were fraudulent, and that the bankruptcy court had been imposed upon by their conspiracy, in fraud of the incorporators, whom they falsely pretended to represent, that moment the Government of Salvador came to the aid of the conspirators and by executive act destroyed the only thing of value worth retrieving through the courts.

It is not the denial of justice by the courts alone which may form the basis for reclamation against a nation, according to the rules of international law.

There can be no doubt—

Says Halleck—

that a State is responsible for the acts of its rulers, whether they belong to the legislative, executive, or judicial department of the Government, so far as the acts are done in their official capacity.

The law enacted by the Congress of Salvador in relation to foreigners provides (art. 39):

Only in case of the denial of justice, or of a voluntary delay of its administration, can foreigners appeal to the diplomatic forum, but only after having exhausted in vain the ordinary remedies provided by the laws of the Republic.

It is apparent in this case that an appeal to the courts for relief from the bankruptcy would have been in vain after the acts of the executive had destroyed the franchise, and that such a proceeding would have been a vain thing is the sufficient answer to the argument based upon this law of Salvador.

What would have profited these despoiled American citizens if they had successfully appealed to the courts for the setting aside of the
bankruptcy proceedings, after the concession was destroyed by the closing of the port of El Triunfo and the grant of the franchise to strangers?

Said Mr. Fish to minister Foster:

Justice may as much be denied when it would be absurd to seek it by judicial process as if denied after being so sought.

Again, this is not a case of the despoliation of an American citizen by a private citizen of Salvador, on which, on appeal to the courts of Salvador, justice has been denied the American national, nor is it a case where the rules applying to that class of reclamations, so numerous in international controversies, have to do. This is a case where the parties are the American nationals and the Government of Salvador itself as a party to the contract; and in this case, in dealing with the other party to the contract, the Government of Salvador is charged with having violated its promises and agreements by destroying what it agreed to give, what it did give, and what it was solemnly bound to protect.

Some one of the most respected authorities in international law, Lewis Cass, has laid down the undoubted rule and its exception, as broad as the rule, when he says that—

When citizens of the United States go to a foreign country, they go with an implied understanding that they are to obey its laws and submit themselves in good faith to its established tribunals. When they do business with its citizens, or make private contracts there, it is not to be expected that either their own or the foreign government is to be made a party to this business or these contracts, or will undertake to determine any dispute to which they give rise. * * *

The case is widely different when the foreign government becomes itself a party to important contracts, and then not only fails to fulfill them, but capriciously annuls them, to the great loss of those who have invested their time, labor, and capital in their reliance upon its good faith and justice. *

In any case, by the rule of natural justice obtaining universally throughout the world wherever a legal system exists, the obligation of parties to a contract to appeal for judicial relief is reciprocal. If the Republic of Salvador, a party to the contract which involved the franchise to El Triunfo Company, had just grounds for complaint that under its organic law the grantees had, by misuser or nonuser of the franchise granted, brought upon themselves the penalty of forfeiture of their rights under it, then the course of that Government should have been to have itself appealed to the courts against the company and there, by the due process of judicial proceedings, involving notice, full opportunity to be heard, consideration, and solemn judgment, have invoked and secured the remedy sought.

It is abhorrent to the sense of justice to say that one party to a contract, whether such party be a private individual, a monarch, or a government of any kind, may arbitrarily, without hearing and without impartial procedure of any sort, arrogate the right to condemn the other party to the contract, to pass judgment upon him and his acts, and to impose upon him the extreme penalty of forfeiture of all his rights under it, including his property and his investment of capital made on the faith of that contract.

Before the arbitrament of natural justice all parties to a contract, as to their reciprocal rights and their reciprocal remedies, are of equal dignity and are equally entitled to invoke for their redress and for

* Wharton's Digest, section 230.
their defense the hearing and the judgment of an impartial and disinterested tribunal.

It follows that the Salvador Commercial Company and the other nationals of the United States who were shareholders in El Triunfo Company, as hereinbefore named, are entitled to compensation for the result of the destruction of the concession and for the appropriation of such property as belonged to that company, excepting such property as was accumulated and constructed under the terms of the concession, to be vested in and owned by the Republic, to the extent of the interests of such American citizens in said concession and such property.

Under the terms of the protocol and by the accepted rules of international courts in such cases, nothing can be allowed as damages which has for its basis the probable future profits of the undertaking thus summarily brought to an end. Notwithstanding the evidence of the computable rate of increase of earnings and profits from the beginning until the end of the first half of 1898, and although the concession by its terms still had twenty-one years to run, yet we are precluded by the rule mentioned from assuming that the rate of profits would increase during the remainder of the term in the same ratio, or at all, or even that it would continue to earn at the rate actually shown by the evidence of Salvador itself, heretofore cited.

If on the tangible evidence for the assessment of the valuation of the franchise we give its value, in our view we can give nothing even for the cost of the buildings and structures erected by the capital of the company which, by the terms of the franchise, were to become the property of the Republic. Neither can we give any award for the expenditure made through the procurement of the company by the United States in the survey and charting of Jiquilisco Bay and its entrance, however much such structures and such survey may add to the permanent wealth of the Republic of Salvador.

On the clear and certain evidence before us, without involving ourselves in speculation, but computable on the uncontradicted and direct evidence presented, we find the value of the franchise, computed without reference to future or speculative profits or any speculative or imaginary basis whatever, to be $750,000. We think also that damages should be awarded for the value of the steamer Celia, less the balance of her purchase price, which remained unpaid at the closing of the business of the company. We find also that the value of the property of the company taken and left in Salvador, which was not the property of the Government, as before stated, but which was exclusively the property of the company, to be $45,000.

We are of opinion that the claimants before this tribunal are entitled to recover costs and reasonable attorneys' fees. Attorneys and counsel have been employed to obtain relief from the Government of Salvador before the intervention of the Government of the United States was invoked. Since intervention eminent counsel have been employed whose residence and places of business are in California, and these, since the latter part of 1899, have been almost constantly employed in this matter both at Salvador and at Washington, at distances far remote from their places of residence and business.

These expenses have been exclusively borne by the Salvador Commercial Company. Before intervention by the United States they disbursed in that behalf, according to the evidence, irrespective of
attorneys' fees, $2,671.31 in an effort to secure rehabilitation of El Triunfo Company. After intervention by the United States the expenses of prosecuting this reclamation, borne by the Salvador Commercial Company, exclusive of all attorney and counsel fees, have been, according to the evidence, $18,864.77.

We are of opinion that fair compensation for such attorneys and counsel employed after intervention, including their services rendered at the capital of Salvador and at Washington, is $60,000. Of the valuation of the franchise, of the damages for the Celia and the property taken as above stated, we think the Government of the United States is entitled to recover, for the behoof of its nationals involved in this matter, each its or his proportion in accordance with the number of shares held in Triunfo Company, Limited; and as those shares were divided into 1,000 of $100 each, each of the American citizens, including the Salvador Commercial Company, will be entitled, through the Government of the United States, to receive of this award for such property such proportion of the amounts as the number of shares held by each bears to the total number of shares of the company.

Aside from its share in the damages last mentioned, which would be represented by its 501 shares in El Triunfo Company, the Salvador Commercial Company is entitled to receive as a part of its damages all of the said expenses paid out and the attorney and counsel fees, in which the other stockholders, having contributed nothing, have no share.

We have not discussed the question of the right of the United States under international law to make reclamation for these shareholders in El Triunfo Company, a domestic corporation of Salvador, for the reason that the question of such right is fully settled by the conclusions reached in the frequently cited and well-understood Delagoa Bay Railway Arbitration.

The particulars and items of the damages found are definitely stated in the formal award and its schedule this day signed.

HENRY STRONG.
DON M. DICKINSON.

ARBITRATION OF CLAIM OF ROSA GELBTRUNK V. SALVADOR.

Mr. Hay to Mr. Merry.

No. 438.]  DEPARTMENT OF STATE,
Washington, January 17, 1902.

Sir: I have to acknowledge the receipt of your dispatch, No. 608, of August 24, 1901, inclosing a copy and translation of a note from the Government of Salvador contesting the claim of Mrs. Rosa Gelbtrunk against that Government for $22,654.43 for the seizure of merchandise at Sanuntepeque, Salvador, by revolutionary troops in November, 1898.

The Department has given careful consideration to this claim. The revolutionists who made the seizure now constitute the Government of Salvador, which is therefore answerable for the full payment of the indemnity. The Government of Salvador denies liability, while

*Not printed.*
not denying the seizure and appropriation of the property by the military forces of the Republic.

The seizure is proved by the affidavits of a number of eyewitnesses, the evidence of title in the claimant is clear, and the value of the goods taken is shown by the certificate of two appraisers appointed by the court, one representing Gelbtrunk and the other the Salvadoran Government.

Inasmuch as this claim is founded in the tortuous action of the State, the State is answerable for the payment of an indemnity, the amount of which seems to have been fairly established as above stated. The Government of the United States therefore expects the immediate payment of an indemnity in the amount of said claim. The claim is just beyond dispute, and for this reason it is hoped that it will be paid without further delay.

As, however, the Department has accepted the principle of arbitration in the case of the Salvador Commercial Company, it is not unwilling that such principle shall apply also to this case, and that this claim shall be submitted to the same arbitrators as the claim of the Salvador Commercial Company is to be submitted to, provided the agreement to submit is made promptly.

You will, accordingly, propose to the Salvadoran Government that the claim be submitted to arbitration as above suggested.

I am, etc.,

JOHN HAY.

Mr. Merry to Mr. Hill.

No. 696.] LEGATION OF THE UNITED STATES,
San José, March 1, 1902.

SIR: I have the honor to advise the receipt of a dispatch from the Salvador Government stating that it will accept our offer to arbitrate the Gelbtrunk claim for $22,654.43, jointly with that of the Salvador Commercial Company, provided it be allowed thirty days from the date upon which you accede to the request as notified to this legation by cable, this period being claimed as necessary to collect and translate the evidence which the Salvador Government desires to present. * * * I presume that you will agree to the request regarding the Gelbtrunk claim, and, if agreeable, shall expecton receipt hereof your cablegram to that effect, which I shall promptly transmit to the minister of foreign affairs at San Salvador, the thirty days allowed commencing from the date of your telegraph to this legation.

I respectfully forward herewith copy and translation of dispatch from the minister of foreign relations of Salvador conveying above request.

With assurances, etc.,

WILLIAM LAWRENCE MERRY.

[Inclosure.—Translation.]

Mr. Trigueros to Mr. Merry.

MINISTRY OF FOREIGN RELATIONS,
San Salvador, February 18, 1902.

MR. MINISTER: I have the honor to refer to your excellency’s dispatch dated January 28 last, relative to the calling of the attention of this Government to the Gelbtrunk claim for $22,654.43, arising from merchandise taken by the troops of the
Government, who, in your excellency's opinion, should be responsible for that amount, because, this claim being founded upon an unjust act of the State, this Government is responsible for the payment of indemnity whose amount appears fully established. Your excellency adds that, having accepted arbitration in the case of the Salvador Commercial Company, you desire to apply the principle to this question and that the Gelbtrunk case be submitted to the same arbitrators as the claim of the Salvador Commercial Company, provided that this Government gives prompt consent, since otherwise your excellency advises having instructions to ask the early payment of that sum.

In reply I have the honor to advise your excellency that my Government accepts the friendly proposition of the United States Government regarding the submission to the court of arbitrators who will act in the claim of the Salvador Commercial Company the matter of Mrs. Gelbtrunk, provided that there be granted to both parties a period of one month to present their proofs, a period that should count from the acceptance of this first request by the Government of your excellency, since my Government needs this fixed term to collect, prepare, translate into English, and to send to Washington to our lawyers some documents that should be proofs of its rights before the arbitrators.

If your excellency accepts this period that I request, since that marked by Article III of the protocol of arbitration is about to expire, I beg that you will please advise by telegraph, if you approve, with the purpose that the term of thirty days to which I have made reference begins to count from that date.

I am pleased to renew, etc.,

Jose Trigueros.

Mr. Hill to Mr. Merry.

[Telegram.—Paraphrase.]

Department of State,
Washington, March 14, 1902.

(Mr. Hill states that a delay of thirty days to present proofs for the arbitration of the Gelbtrunk claim in form requested by Salvador is granted; that this action closes the agreement to arbitrate the claim, and that proofs will accordingly be presented.)

Mr. Merry to Mr. Hill.

No. 698.]

Legation of the United States,
San José, March 15, 1902.

Sir: I have the honor to acknowledge the receipt of your cablegram dated March 14. On receipt thereof I sent a cablegram to the minister of foreign affairs of Salvador, copy of which please find herewith, and also copy of my dispatch to him on the same subject, which goes forward via Puntarenas by mail hence to-morrow.

With the hope that this claim is now likely to receive a friendly solution in the near future, I remain, etc.,

William Lawrence Merry.

[Inclosure 1—Telegram.]

Mr. Merry to Mr. Trigueros.

Legation of the United States,
San José, March 15, 1902.

The Washington Government concedes thirty days' period from the fourteenth of present month to present proofs for arbitration of Gelbtrunk case in manner requested by Salvador. This concludes arrangement to arbitrate this claim, and proofs will be presented accordingly.

William L. Merry.
FOREIGN RELATIONS.

[Inclosure 2.]

Mr. Merry to Mr. Trigueros.

LEGATION OF THE UNITED STATES,
San José, March 15, 1902.

SIR: I have the honor to confirm my cablegram of this date to your excellency. This being in accordance with the request presented in your excellency’s dispatch dated February 19, 1902, I congratulate you that this matter is thus to receive a friendly solution agreeable to both our Governments. The Department of State at Washington will accordingly await the evidence in this case from the Government of El Salvador within the period mutually arranged.

With assurances, etc.,

WILLIAM LAWRENCE MERRY.

Award of arbitrators.

IN THE MATTER OF THE ARBITRATION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF SALVADOR.

THE CLAIM OF ROSA GELBTRUNK.

Certain differences having arisen between the United States and the Republic of Salvador as to the liability of the last-mentioned Republic to pay an indemnity for the loss sustained by certain citizens of the United States, namely, Maurice Gelbtrunk and Isidore Gelbtrunk, members of the firm of Maurice Gelbtrunk & Co., by reason of the loss and destruction of merchandise belonging to the said firm during the occupation of the town of Sensuntepeque, in the month of November, 1898, by a revolutionary force, the said merchandise having been carried off, stolen, or destroyed by the soldiers of the said revolutionary army, which claim was afterwards assigned by the firm of Maurice Gelbtrunk & Co. to Rosa Gelbtrunk, the present claimant; and it having been found impossible to adjust the said differences by diplomatic negotiation, it was agreed by the said Republics to refer the said disputes to the arbitration and award of the undersigned, Sir Henry Strong, chief justice of Canada; the Hon. Don M. Dickinson, of Michigan, and the Hon. Señor Don José Rosa Pacas, LL. D., of the city of Santa Anna, in Salvador, who, having taken upon themselves the duty of hearing and determining the said differences, do now, after having read and considered the evidence and documents produced by the parties, respectively, and having heard the parties by their counsel, proceed to make their award, as follows:

The said arbitrators do award, declare, and adjudge that the said United States is not entitled to any payment or indemnity in respect to the claim made by the said Rosa Gelbtrunk.

In witness whereof, the arbitrators above named have signed and published this, their award, at the city of Washington, this 2d day of May, in the year of our Lord 1902. Done in quadruplicate and in the English and Spanish languages.

HENRY STRONG.
DON M. DICKINSON.
JOSÉ ROSA PACAS.
Opinion of Sir Henry Strong:

In 1898 Maurice Gelbtrunk & Co., a partnership firm composed of Maurice Gelbtrunk and Isidore Gelbtrunk, both of whom were American citizens, were engaged in carrying on a mercantile business in the Central American Republic of Salvador.

In November, 1898, there was a revolution in Salvador and a revolutionary force occupied the city of Sensuntepeque, where a quantity of merchandise of the value (in silver) of $22,000 and upward, belonging to the firm of Gelbtrunk & Co., was stored. There is no dispute as to the value of these goods or as to the fact of their being the property of Gelbtrunk & Co. The soldiers of the revolutionary army possessed themselves of the goods—"looted" them, in short—and sold, appropriated, or destroyed them. It does not appear that this was done in carrying out the orders of any officer in authority or as an act of military necessity, but, so far as it appears, it was an act of lawless violence on the part of the soldiery. The firm of Maurice Gelbtrunk & Co. having assigned their claim against the Republic of Salvador to the present claimant, Rosa Gelbtrunk, the wife of Isidore Gelbtrunk, Mrs. Gelbtrunk (who, following the status as regards nationality of her husband, was also an American citizen) appealed to the Government of the United States to intervene on her behalf in claiming indemnity for the property lost. The Government did so intervene, and having failed to bring about a satisfactory settlement by diplomatic negotiation, it was agreed by the United States and Salvador to refer this claim to the arbitrators to whom another claim by the United States against Salvador had already been referred. The arbitrators in question were the Hon. Don M. Dickinson, Don José Rosa Pacas, a citizen of Salvador, and myself. After having read the evidence and documents produced by the parties and heard the learned and able arguments of counsel, we came unanimously to the conclusion that the United States had failed to establish a right to indemnity on behalf of the claimant.

I now write this opinion not on behalf of my brother arbitrators, but as stating exclusively my own personal reasons for the conclusion arrived at.

There is no dispute as to facts. It is admitted, or can not be denied, that the members of the firm of Gelbtrunk & Co. were American citizens; that the merchandise looted or destroyed in respect of which the claim is made was of the actual value stated; and, further, that it was stolen or destroyed by the soldiers as alleged. The only point for decision is that principally argued, namely, the right, upon established principles of international law, of the United States to reclaim indemnity for a loss accruing to its citizens upon the facts stated.

The principle which I hold to be applicable to the present case may be thus stated: A citizen or subject of one nation who, in the pursuit of commercial enterprise, carries on trade within the territory and under the protection of the sovereignty of a nation other than his own is to be considered as having cast in his lot with the subjects or citizens of the State in which he resides and carries on business. Whilst on
the one hand he enjoys the protection of that State, so far as the police regulations and other advantages are concerned, on the other hand he becomes liable to the political vicissitudes of the country in which he thus has a commercial domicile in the same manner as the subjects or citizens of that State are liable to the same. The State to which he owes national allegiance has no right to claim for him as against the nation in which he is resident any other or different treatment in case of loss by war—either foreign or civil—revolution, insurrection, or other internal disturbance caused by organized military force or by soldiers, than that which the latter country metes out to its own subjects or citizens.

This I conceive to be now the well-established doctrine of international law. The authorities on which it has been so established consist of the writings of publicists and diplomats, the decisions of arbitrators—especially those of mixed commissions—and the text of writers on international law. Without proposing to present an exhaustive array of authorities, I may refer to some of these.

In the case of Anthony Barclay, a British subject, having a commercial domicile in Georgia at the time of the march of General Sherman's army through that country, the mixed commission appointed under the treaty of Washington of May, 1871, disallowed a claim made for wanton destruction of valuable property—books, china, furniture, and works of art—it having been proved that this spoliation was committed by the soldiers of the army not only without authority, but in direct disobedience of the orders of the general commanding. (Papers relating to Arbitration of Washington, vol. 19, p. 50.)

In 1849 there were rebellions and political insurrections in Naples and Tuscany in the course of which British subjects suffered losses for which they claimed indemnity from the governments mentioned, and the British cabinet intervened diplomatically on their behalf to obtain it. It having been insisted by the British agents that Austria, which had furnished succor to the Italian governments, was liable, reclamations were made at Vienna, which were promptly refused. In his note in reply to the British Government, Prince Schwartsenberg insisted on the principle which seems to apply to the present case. That diplomat expressed his opinion as follows:

Lorsqu'un étranger se fixe dans une contrée autre que la sienne et qui vient à être en proie aux horreurs de la guerre civile, cet étranger est tenu d'en subir les conséquences. Le Prince ajoutait que, quelque dispositions que pussent être les nations civilisées d'Europe à étendre les limites du droit de protection, jamais cependant elles ne sauraient au point d'accorder aux étrangers des privilèges que les lois territoriales ne garantissent pas aux nationaux.

The question did not, however, rest here. The Government of Great Britain applied to Russia to act as arbitrator of the claim, but that power refused to accept the office of arbitrator, insomuch as to do so would be to cast doubt upon what it considered to be a plain and well-established principle of international law generally accepted by civilized nations; and the Russian chancellor, Count Nesselrode, expressed himself in the same terms as the Austrian minister. (Calvo, ed. 5, vol. 3, p. 144.)

The expression of this rule of law by the Austrian and Russian Governments in the Tuscany case was approved by Mr. Seward, Secretary of State, in a dispatch to the Austrian minister to the United States of
NICARAGUA, COSTA RICA, AND SALVADOR.

the 16th of November, 1865, from which the following passage is extracted:

It is believed to be a received principle of public law that the subjects of foreign powers domiciled in a country in a state of war are not entitled to greater privileges or immunities than the other inhabitants of the insurrectionary district. If for a supposed purpose of the war one of the belligerents thinks proper to destroy neutral property, the other cannot legally be regarded as accountable therefor. By voluntarily remaining in a country in a state of civil war they must be held to have been willing to accept the risks as well as the advantages of that domicile. The same rule seems to be applicable to the property of neutrals, whether that of individuals or of governments, in a belligerent country. It must be held to be liable to the fortunes of war. In this conclusion the undersigned is happy in being able to refer the Austrian Government to many precedents of recent date, one of which is a note of Prince Schwarzenberg of the 14th of April, 1850, in answer to claims put forward on behalf of British subjects who were represented to have suffered in their persons and property in the course of an insurrection in Naples and Tuscany. (Wharton, vol. 2, p. 577.)

The same doctrine is laid down by another distinguished Secretary of State, Mr. Bayard, in a letter to Mr. O'Connor of the 29th of October, 1855, wherein he says:

However severe may have been the claimant's injuries, it must be recollected that like injuries are committed in most cases where towns are sacked, and that aliens resident in such towns are subject to the same losses as are citizens. It has never been held, however, that aliens have for such injuries a claim on the belligerents by whom they are inflicted. On the contrary, the authorities lay down the general principle that neutral property in belligerent territory shares the liability of property belonging to the subjects of the state. (Wharton, vol. 2, p. 581.)

Again, we find Mr. Marcy, Secretary of State, in 1854 using similar language, as follows:

The undersigned is not aware that the principle that foreigners domiciled in a belligerent country must share with the citizens of the country in the fortunes of war has ever been seriously controverted or departed from in practice.

And this passage is quoted with approval in a letter from the Attorney-General of the United States to the Secretary of State. (Wharton, vol. 2, p. 586.)

These citations might be largely added to, but those already made are sufficient to show that the rule that aliens share the fortunes of citizens in case of loss by military force or by the irregular acts of soldiers in a civil war is firmly established.

It is, however, not to be assumed that this rule would apply in a case of mob violence which might, if due diligence had been used, have been prevented by civil authorities alone or by such authorities aided by an available military force. In such a case of spoliation by a mob, especially where the disorder has arisen in hostility to foreigners, a different rule may prevail. It would, however, be irrelevant to the present case now to discuss such a question. It therefore appears that all we have to do now is to inquire whether citizens of the United States, in the matter of losses incurred by military force or by the irregular acts of the soldiery in the revolution of November, 1838, in Salvador, were treated less favorably or otherwise than the citizens of Salvador.

To this inquiry there can be but one answer: They were not in any way discriminated against, for the legislature of the Republic in providing indemnity for such losses applied the same as well to foreigners as to the citizens of Salvador.
For these reasons I am of opinion that we have no alternative but to reject this claim.  

Henry Strong, President.

I concur.  

Don M. Dickinson.  
April 26, 1902.

I concur in your respect-worthly opinion.  

José Rosa Pacas.  
April 26, 1902.

IN ABSENCE OF TREATY STIPULATIONS, LAW OF SALVADOR GOVERSNS, WHERE NOT INCONSISTENT WITH INTERNATIONAL LAW, ETC.

Mr. Merry to Mr. Hay.

No. 665.]  
Legation of the United States,  
San José, January 4, 1902.

Sir: I am informed by Consul-General Jenkins at San Salvador that he has received from the Department of State a volume entitled "Compilations of Treaties in Force, 1899." He notes on page 547 therein that the Government of Salvador has given notice that the extradition treaty with the United States will terminate in 1904. On page 550 it is stated that the "treaty of amity, commerce, and consular privileges," ratified by the United States Senate on March 31, 1871, has been abrogated on May 30, 1893. The consul-general follows these statements with the question if, in the absence of the treaty last named, he shall be governed by Salvador laws. I have not deemed it wise to answer this question affirmatively, although it appears the sequence. I have suggested that Mr. Jenkins proceed in all consular duties precisely as if the treaty were still in operation and place upon the Salvador officials the responsibility of claiming the contrary. * * * But meanwhile I respectfully suggest that the matter is worthy of the attention of the Department of State, unless, indeed, it has already received or is receiving due consideration. It is obvious that my instruction to Consul-General Jenkins is a temporary expedient which may become inoperative at any time, and if the Department has any suggestions to make in that connection I shall be pleased to receive and act upon them to the best of my ability.

With assurances, etc.,

William Lawrence Merry.

Mr. Hay to Mr. Merry.

No. 446.]  
Department of State,  
Washington, January 22, 1902.

Sir: I have to acknowledge the receipt of your dispatch, No. 665, of the 4th instant, stating that the consul-general at Salvador has asked you if, in view of the abrogation on May 30, 1893, of the treaty of amity, commerce, and consular privileges between the United States
and Salvador, he should be governed by the laws of Salvador. You report that you have suggested to the consul-general that he proceed in all consular duties precisely as if the treaty were still in force, and that he place upon the Salvadorean officials the responsibility of claiming the contrary.

You submit the matter to the Department's attention.

Notice of the termination of the treaty of amity, commerce, and consular privileges was given in a note of May 30, 1892, from Señor Gallegos, minister of foreign affairs of Salvador, to take effect one year from that date. Acknowledgment of the notice of termination having been duly made by the United States, the treaty terminated May 30, 1893. (See Foreign Relations, 1892, pp. 44, 45.)

In the absence of treaty stipulations, the law of Salvador would govern where it is not inconsistent with international law or usage or the principles of natural right and justice.

Your suggestion to Consul-General Jenkins was therefore erroneous.

I am, etc.,

JOHN HAY.

TREATY BETWEEN CENTRAL AMERICAN STATES PROVIDING FOR THE ARBITRATION OF DIFFERENCES.

Mr. Merry to Mr. Hay.

No. 686.] LEGATION OF THE UNITED STATES, San José, February 9, 1902.

Sir: I have the honor to forward herewith printed copy and translation of the treaty entered into by the executives of the republics of Nicaragua, Salvador, Honduras, and Costa Rica, at Corinto, on January 20, 1902, relating to obligatory arbitration, etc. I am informed by President Iglesias, who has just arrived here, that the president of Guatemala has also agreed to sign it and that a fifth copy will be sent him for that purpose. If this convention is duly ratified by the legislative branches of the respective Governments, of which I have no doubt, it will tend to the peace of Central America.

With assurances, etc.,

WILLIAM LAWRENCE MERRY.

[Enclosure.—From El Comercio, Managua, Nicaragua, January 30, 1902.—Translation.]

Central American treaty of peace.

The Governments of Nicaragua, Salvador, Honduras, and Costa Rica, desirous of contributing by all the means in their power to the maintenance of the peace and good harmony that exists and should exist among them, have agreed to celebrate a convention of peace and obligatory arbitration, and to that effect have named as their respective plenipotentiaries:

The Government of Nicaragua, his excellency Señor Doctor Don Fernando Sánchez, minister of foreign relations;

The Government of Salvador, his excellency Señor Doctor Don Salvador Rodríguez, subsecretary of foreign relations;

The Government of Honduras, his excellency Señor Doctor Don Cesar Bonilla, minister of foreign relations;

The Government of Costa Rica, his excellency Señor Don Leonidas Pacheco, minister of foreign relations;

F R 1902, PT 1—56
Who, after having presented their credentials and the same being found in good and due form, have agreed upon the following covenant:

ARTICLE 1. It is declared that the present convention has for object the incorporation in form of public treaty the conclusions to which have arrived their excellencies, the Presidents, General Don J. Santao Zelaya, General Don Tomas Regalado, General Don Terencio Sierra, and Don Rafael Iglesias, in the several conferences that have been held in this port with the sole object of maintaining and assuring, by all possible means, the peace of Central America.

ARTICLE 2. The contracting Governments establish the principle of obligatory arbitration, in order to adjust every difficulty or question that might present itself between the contracting parties, binding themselves in consequence to submit them to a tribunal of Central American arbitrators.

ARTICLE 3. Each one of the contracting parties shall name an arbitrator and a substitute to constitute the tribunal. The terms of the arbitrators shall be for one year, counting from their acceptance, and then they may be reelected.

ARTICLE 4. The arbitrators of those states among whom exists the disagreement shall not form part of the tribunal for the consideration of the concrete case, this remaining entirely with the arbitrator or arbitrators of the remaining states.

ARTICLE 5. If, through pairing, there should be no decision, the tribunal shall select a third among the substitutes. The third should necessarily adhere to one of the views given out.

ARTICLE 6. As soon as a difficulty or question presents itself between two or more states, their respective Governments shall advise the remaining signers of the present convention.

ARTICLE 7. The contracting Governments establish and recognize the right of each one of them to offer without delay, singly or conjointly, their good offices to the Governments of the states that are in disagreement, even without previous acceptance by them, and though they should not have notified them of the difficulty or question pending.

ARTICLE 8. The friendly offices exhausted without satisfactory result, the government or governments that would have exercised them shall notify the others, declaring at the proper time arbitration proceedings. This declaration shall be communicated with the greatest possible brevity to the member of the tribunal corresponding to the president of same, with the object that within a period not exceeding fifteen days the tribunal that is to know and decide the case comes together. The installation of the tribunal shall be communicated by telegraph to the signing governments, demanding from the contending parties the presentation of their claims within the fifteen days following.

ARTICLE 9. The tribunal shall give its judgment within five days following the expiration of the term which has been spoken of.

ARTICLE 10. The difficulties that may arise through questions of pending limits, or through interpretation, or execution of treaties of limits, shall be submitted by the governments interested to the knowledge and decision of a foreign arbitrator of American nationality.

ARTICLE 11. The Governments of the states in dispute solemnly agree not to execute any hostile act, warlike preparations, or mobilization of forces, with the object of not impeding the arrangement of the difficulty or question through the means established by the present agreement.

ARTICLE 12. The presidency of the arbitration tribunal shall be held alternately for annual periods by each one of the members, following the alphabetical order of the states represented, the first year corresponding to the Costa Rican arbitrator, the second to that of Salvador, and so on.

When, in the event foreseen in article 4, the member filling the presidency of the tribunal shall be prohibited from acting, the temporary presidency for the case in question shall be filled by the arbitrator that may be available according to precedence established in the foregoing paragraph. The tribunal shall be held in the capital of the state to which the arbitrator belongs, who should preside.

ARTICLE 13. The arbitration tribunal shall dictate all those rational dispositions that it considers necessary to fully carry out the high mission which is conferred upon it by this treaty.

ARTICLE 14. With the object of preventing those abuses that might be committed in a state by political emigrants from another against the public peace and tranquillity of this, the contracting Governments agree to send to the frontier those emigrants with respect to whom a petition should be made by the Governments interested.

ARTICLE 15. With the object of harmonizing as much as possible the ideas and tendencies of the Governments of the states signing, in all that relates to the maintenance and strengthening the bonds of Central American friendship and good under-
standing among them, while for such ends there are not established permanent legations among the contracting States, the nomination of consuls-general is recommended from each one in the other States, who shall have at the same time the character of confidential agents from their respective Governments.

Article 16. The present convention shall be submitted to the ratification of the respective congresses as soon as possible and once ratified by them all will enter into force thirty days after without the need of exchange.

Article 17. For the installation of the arbitration tribunal established by this agreement, the 15th of September of the current year, anniversary of the independence of Central America, is named.

Article 18. In the desire that the present convention may unite all the States of the Central American family, the signing Governments shall invite, jointly or separately, the Government of the Republic of Guatemala to adhere to its stipulations if it shall be possible.

In witness whereof we sign four copies of the same tenor in the port of Corinto, Republic of Nicaragua, the 20th day of January, 1902.

FERNANDO SANCHEZ,
SALVADOR RODRIGUEZ,
CESAR BONILLA,
LEONIDAS PACHECO.

The present treaty being drawn up in accordance with instructions to that effect, the president of the Republic resolves to give it his approval.

ZELAYA.

National Palace, Managua, January 28, 1902.

SANCHEZ, Minister of Foreign Relations.

Mr. Merry to Mr. Hay.

No. 694.] LEGATION OF THE UNITED STATES,
San José, March 1, 1902.

SIR: I have the honor to advise the return to San Salvador on February 16 of President Regalado after a brief visit to Guatemala City. * * * I am also informed from Managua that the President of Guatemala has joined in the arbitration treaty signed at the Corinto conference on January 20, 1902, by the Presidents of Nicaragua, Costa Rica, Salvador, and Honduras, in accordance with his promise to President Iglesias. * * * The peace of Central America now appears assured in the near future. * * *

With assurances, etc.,

WILLIAM LAWRENCE MERRY.

PROTECTION OF CUBAN INTERESTS BY UNITED STATES CONSULAR OFFICIALS.

Mr. Merry to Mr. Hay.

No. 726.] LEGATION OF THE UNITED STATES,
San José, May 31, 1902.

SIR: I have the honor to acknowledge the receipt of your cablegram dated May 24.

In accordance therewith I have addressed the Governments named, requesting reply by telegraph from Nicaragua and Salvador. I have pleasure in advising that I have received an official note from the Hon. Leonidas Pacheco, minister of foreign relations of Costa Rica, dated the 28th instant, courteously granting the permission requested. In

a Printed, p. 6.
accordance therewith I have notified the United States consul at San José, who will at once undertake the service required under your instruction.

With assurances, etc.,

WILLIAM LAWRENCE MERRY.

---

Mr. Merry to Mr. Hay.

No. 733.]

LEGATION OF THE UNITED STATES,  
San José, June 18, 1902.

Sir: I have the honor to advise receipt of telegram from Señor Don Dr. Francisco S. Reyes, minister of foreign affairs of the Republic of El Salvador, dated June 17, and reading as follows, translated:

My Government agrees with pleasure that the consuls of the United States shall exercise their good offices in representation of the Cuban Republic, while the latter names its own consular officers. I have in this way the honor to reply to your courteous dispatch dated May 25 last.

I am still awaiting reply from the Government of Nicaragua.

With assurances, etc.,

WILLIAM LAWRENCE MERRY.

---

Mr. Merry to Mr. Hay.

No. 734.]

LEGATION OF THE UNITED STATES,  
San José, June 20, 1902.

Sir: I have the honor to advise the receipt of a telegram dated this day from the Hon. Fernando Sanchez, minister of foreign relations of the Republic of Nicaragua, informing me that his Government will be pleased to permit consular officers of the United States to use their good offices on behalf of the citizens of the Republic of Cuba resident in or visiting Nicaragua. Of this I have advised United States consuls in Nicaragua in accordance with your instructions.

With assurances, etc.,

WILLIAM LAWRENCE MERRY.

---


Mr. Merry to Mr. Hay.

No. 747.]

LEGATION OF THE UNITED STATES,  
San José, July 19, 1902.

Sir: I have the honor to forward herewith copy and translation of a telegram from President Zelaya, of Nicaragua, received to-day; also my reply thereto, and my telegram to the consul-general at Panama.

You will note that, providing President Zelaya is correct, the Government of Colombia is preventing the free transit and shipment of the property of the Nicaraguan Government across the Panama Isthmus.
It appears to me that Colombia and Nicaragua being nominally at peace with each other, the former Government is violating her treaty obligations with us in preventing the free passage and reshipment of any class of merchandise belonging to Nicaragua, even though it be arms or munitions of war. If I am correct in this opinion I beg to respectfully suggest that notice may be given to the Colombian authorities at the Panama Isthmus that our guaranty of free transit by which the Isthmus has been kept open to commerce during the revolution which has existed for nearly three years, and which has prevented its revolutionary occupation, must be respected. The action of the Colombian Government herein appears to be a question of some importance as establishing a dangerous precedent applicable to either the Panama Railroad or Canal, for which reason the details thereof are respectfully presented for your information.

With assurances, etc.,

WILLIAM LAWRENCE MERRY.

---

[Inclosure 1.]

President Zelaya to Mr. Merry.

[Telegram.—Translation.]

MANAGUA, July 19, 1902.

My Government has ordered from abroad 16 boxes of revolver cartridges, .38 caliber, for public sale, since this article is a Government monopoly, and it is known that these boxes have been detained in Panama by order of the authorities there.

As the American Government guarantees the neutrality of that route, I beg that you will address the proper quarter in order that the authorities of the Isthmus of Panama do not impede the free transit of said cartridges belonging to my Government.

Anticipating to you thanks, etc.,

J. S. Zelaya.

---

[Inclosure 2.]

Mr. Merry to President Zelaya.

[Telegram.]

LEGATION OF THE UNITED STATES,
San José, July 19, 1902.

I have telegraphed the United States consul-general at Panama not to permit detention on the Isthmus of any article that may be the property of your Government, and I have also written to my Government about the matter.

WILLIAM LAWRENCE MERRY.

---

[Inclosure 3.]

Mr. Merry to Mr. Gudger, consul-general at Panama.

[Telegram.]

LEGATION OF THE UNITED STATES,
San José, July 19, 1902.

I am advised that the shipment of articles belonging to the Government of Nicaragua is prohibited on the Isthmus of Panama for Corinto.

In accordance with the stipulation of our treaty guaranteeing free transit, please effect the prompt dispatch of all such articles.

Merry, Minister.
Mr. Adee to Mr. Merry.

No. 492.]

DEPARTMENT OF STATE,
Washington, August 5, 1902.

SIR: I have to acknowledge the receipt of your dispatch, No. 747, of the 19th ultimo, inclosing a copy of a telegram to you from the President of Nicaragua in which he states that the Government of Colombia has detained 16 boxes of revolver cartridges ordered from abroad by the Nicaraguan Government, and requesting that, pursuant to the stipulations of the treaty between the United States and Colombia, the Government of the United States call upon the Government of Colombia not to prevent the free transit across the Isthmus and shipment of said property.

"Neutrality is the condition of those states which in time of war take no part in the contest." The neutral character of the Isthmus is guaranteed by clause 1, article 35, of the treaty of 1846 between the United States and Colombia.

Hostilities within the central zone are prohibited by the effect of the guaranty, which in the same breath guarantees "the rights of sovereignty which New Granada has and possesses over said territory." These rights of sovereignty are restricted only in respect of the conduct by Colombia of hostilities affecting "free transit from the one to the other sea," which must "not be interrupted or embarrassed." But the stipulation is to be taken in connection with the preceding one, viz: "That the right of way or transit across the Isthmus of Panama upon any modes of communication that now exist, or that may be hereafter constructed shall be open and free to the Government and citizens of the United States, and for the transportation of their articles of produce, merchandise, etc., "of lawful commerce belonging to the citizens of the United States."

Article 35 of the treaty further says:

And in order to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the said advantages, and for the favors they have acquired by the fourth, fifth, and sixth articles of this treaty, the United States guarantee, positively and efficaciously, to New Granada, by the present stipulation, the perfect neutrality of the before-mentioned Isthmus, with the view that free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists; and, in consequence, the United States also guarantee, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory.

The treaty was made for the benefit of the contracting parties and does not impair the sovereign rights of Colombia to lay any sort of embargo on the traffic and transportation of the goods of other governments or of their citizens or subjects.

While we keep the free and open transit of the Isthmus, it is not done in the interest of other states who have no right to invoke the application of the treaty; and although they may incidentally profit by it, this is a mere incident to the execution of the treaty for the purposes and objects expressly specified.

I am, etc.,

ALVEY A. ADEE,
Acting Secretary.
Mr. Merry to Mr. Hay.

No. 757.]  

LEGATION OF THE UNITED STATES,  
San José, August 31, 1902.  

Sir: I have the honor to forward herewith copy and translation of telegram received last evening from President Zelaya, of Nicaragua, and my reply thereto. Since receipt of your No. 492 of August 5 I have awaited information from the United States consul-general at Panama in relation to the merchandise therein alluded to, shipped from New York to Corinto on through bill of lading and seized by Colombian authorities on the Isthmus as the property of the Nicaraguan Government. Consequently I have not as yet communicated to President Zelaya your decision in relation to the transit of such merchandise which, under the present conditions, closes the Isthmus to his Government.

You will note by President Zelaya’s telegram herewith inclosed that the 16 boxes of revolver cartridges alluded to have been returned to New York, whence they were shipped. Carefully reading the treaty of 1846 with New Granada it appears to me that, independent of your decision that said treaty “is not in the interest of other states, who have no right to invoke the application of the treaty,” article 17 thereof especially exempts the free transit of munitions of war, at the option of the Government of New Granada (now Colombia). Possibly this may be a more agreeable argument to present the Nicaraguan Government than that above quoted. Certainly it has been the generally accepted idea in Central and South America that the United States guarantee the free transit across the Panama Isthmus of all classes of merchandise except contraband of war, the property of any nation with which the United States or Colombia may be at war when such transit is attempted.

You will notice that this is apparently the opinion of the United States consul-general at Panama, as set forth in his No. 316 of July 21, to the Department, since, had he considered the interference usual or authorized, no report thereof would have been necessary. You will also note that President Zelaya construes the treaty in the same manner, claiming free transit for munitions of war because “there is no state of war” between Nicaragua and Colombia, when both their Governments have recently permitted the use of their armed vessels to commit acts of war against each other. If I am correctly informed, a formal “declaration of war” is not a necessity in inaugurating hostilities with another power. * * * Having your instructions in this connection, as set forth in your No. 492, of August 5, I shall be guided thereby, but have deemed it proper to inform you of the second request of President Zelaya, as set forth in his last telegram.

With assurances, etc.,

WILLIAM LAWRENCE MERRY.

[Inclosure 1.]  

President Zelaya to Mr. Merry.  
[Telegram.—Translation]  

PRESIDENTIAL MANSION,  
Managua, Nicaragua, August 30, 1902.

I regret to inform you that a box has been detained at Panama, marked “A. C. No. 1,” containing a gun, two bayonets, and accessories, consigned to the chief of the
customs, Corinto, that the consul of Nicaragua, Don Albert Gomez, sends to me from Hamburg, a proceeding that the agent of the railroad in Panama asserts has been ordered by the governor of that port. I permit myself to advise you of this, begging you to please interpose your good offices with the United States consul-general in Panama to the effect that this box may be sent me without delay, because the free transit of the railroad of Panama being guaranteed by the American Government, and there being no state of war between our country and Colombia, I fail to find the occasion that can give cause for the infraction of a treaty in force, as has happened before in detaining and returning to New York a certain quantity of revolver cartridges that our minister of hacienda had ordered, of which you have already had advice, and with that which I now advise you regarding the box sent from Hamburg for me. I hope that in attention to my second petition you will also place before the Secretary of State the irregularity committed by the local government of Panama with the merchandise that comes consigned to our country with the object that acts of such notorious injustices shall receive efficacious reparation, since, by the treaty before referred to, it is the American Government upon whom it is incumbent to guarantee the free transit through the Panama Isthmus, as I have reminded you above.

With assurances, etc.,

J. S. Zelaya.

[Inclosure 2.]

Mr. Merry to President Zelaya.

[Telegram.]

LEGATION OF THE UNITED STATES,
San José: August 31, 1902.

Telegram received. Will immediately address Secretary of State, Washington, in relation thereto. Will write particulars by next mail via Corinto.

Merry.

Mr. Adee to Mr. Merry.

No. 500.]

DEPARTMENT OF STATE,
Washington, September 12, 1902.

Sir: I have received your dispatch No. 757 of the 31st of August in reply to my instruction No. 492 of August 5 in relation to the reported detention upon the Isthmus by the Government of Colombia of certain munitions of war ordered from abroad by Nicaragua. You state that, as you have been awaiting information from the United States consul-general at Panama in relation to the merchandise in question, which had been shipped from New York to Corinto on through bill of lading and seized by the Colombian authorities on the Isthmus as the property of the Nicaraguan Government, you had not as yet communicated to President Zelaya my decision in relation to the transit of such merchandise, which, you say, “under present conditions closes the Isthmus to his (the Nicaraguan) Government.”

Feeling some hesitancy to communicate to President Zelaya the views contained in my instruction of August 5, you suggest that you represent the refusal of Colombia to permit the transit as based upon article 17 of the treaty of 1846 with New Granada, which “especially exempts the free transit of munitions of war at the option of the Government of New Granada, now Colombia,” and you add that the declaration of President Zelaya, in his telegram to you of August 30, that “there is no state of war between Nicaragua and Colombia,” does not exclude the use of the option conferred by article 17, inasmuch as “a formal declaration of war is not a necessity in inaugurating hostilities with another power.”
NICARAGUA, COSTA RICA, AND SALVADOR.

It is not perceived that the provisions of article 17 of the treaty of 1846 have any application to the present case, as that article refers to the liberty of commerce and navigation to be enjoyed by the vessels of the United States and New Granada during the existence of any war in which either of the contracting parties may be engaged. The liberty of commerce and navigation enjoyed by vessels of the United States is not interfered with by the action of Colombia in refusing to permit the transit across her territory of the arms in question. Neither does such action constitute an infraction of article 35 of the treaty, which provides for the free transit across the Isthmus of produce, manufactures, or merchandise belonging to citizens of the United States. The arms referred to are circumstantially stated to be the property of the Nicaraguan Government.

There appears to be no occasion for this Government to determine whether or not a state of war exists between Nicaragua and Colombia.

My instruction of August 5 was not intended to justify the stoppage of the arms by the Colombian Government, but showed that under our treaty with Colombia we enjoyed no right to remonstrate against the stoppage, and therefore could not intervene in what appeared to be a question solely between Colombia and Nicaragua. It would evidently not be appropriate for this Government to express a judgment as to the merits of the case and take ground adversely to either party by declaring that the stoppage of the arms either was or was not rightful.

I am, etc.,

ALVEY A. ADEE,
Acting Secretary.

ACCIDENT TO PRESIDENT ROOSEVELT.

President Regalado to President Roosevelt.

[Telegram.—Translation.]

SAN SALVADOR, September 10, 1902.

I express to Your Excellency the painful sentiments caused me by the occurrence that befell you, and I beg you to accept the expression of my sympathy for that unfortunate event.

TOMAS REGALADO.

President Roosevelt to President Regalado.

[Telegram.]

WHITE HOUSE,
Washington, September 12, 1902.

I thank you for your highly appreciated message of sympathy.

THEODORE ROOSEVELT.