COLOMBIA.

CORRESPONDENCE BETWEEN THE DEPARTMENT OF STATE AND THE LEGATION OF THE UNITED STATES AT BOGOTA.

No. 51.

Mr. Fish to Mr. Hurlbut.

No. 31.] DEPARTMENT OF STATE,
Washington, December 14, 1870.

SIR: I inclose with this a transcript of a dispatch of the 28th ultimo, from Mr. O. M. Long, United States consul at Panama, stating that his official proceedings relative to the estate of J. J. Landerer, a deceasep naturalized American citizen, had been interfered with by the judge of the civil department of Panama in contravention of the stipulations of the consular convention between the United States and New Granada. You are instructed to lay the facts as given in the dispatch of Mr. Long before the Colombian government, and remonstrate against the course pursued by the local authority in interfering with the administration of the estates of decedents, as in the case adverted to.

I am, &c.,

HAMILTON FISH.

No. 52.

Mr. Fish to Mr. Hurlbut.

No. 37.] DEPARTMENT OF STATE,
Washington, April 10, 1871.

SIR: I transmit a copy of a letter of the 6th instant, addressed to this Department by the Acting Comptroller of the Treasury, and of the accompanying statement of the account between this Government and that of the United States of Colombia, with reference to the awards of the joint commission under the conventions of the 10th of September, 1857, and 10th of February, 1864, a copy of which is also herewith transmitted. Pursuant to the account adverted to there was due to this Government by that of Colombia, on the 31st of December last, the sum of $157,372 48. It appears that the last payment was made by that government on the 22d of June, 1868. It is presumed that the account is stated in strict conformity to the terms of payment stipulated in Article III of the convention of 1857. Hence the charge for interest on deferred payments, to which it cannot be anticipated that that government will object. You will mention the subject to the Colombian minister for foreign affairs, and may leave with him a copy of the account. You will say to him that it is desirable that the balance due by Colombia should be paid as soon as may be convenient, especially as we long ago advanced to the claimants the sums awarded to them respectively.

I am, &c.,

HAMILTON FISH.

No. 53.

Mr. Fish to Mr. Hurlbut.

No. 43.] DEPARTMENT OF STATE,
Washington, June 21, 1871.

SIR: I transmit a copy of dispatch No. 102, of the 30th ultimo, addressed to this Department by Owen M. Long, esq., consul of the United States at Panama. It relates to recent revolutionary events in that state, and particularly to the seizure and detention of the steamer Montijo, belonging to citizens of the United States, by Thomas Herrera, the leader of the faction in opposition to the Colombian authorities. As the seizure is shown to have taken place before there was any organization of that faction, the members cannot, it is presumed, even under the constitution of Colombia, have been entitled to the rights of belligerents. The seizure was, therefore, a piratical act, for which it is expected that the authors will be held to be judicially accountable. The treaty stipulates that no such seizure shall be made, even by the Colombian authorities, without just compensation to the aggrieved parties. When, therefore, such an act is committed in the waters of that republic by unauthorized persons, the obligation of that government to make amends therefor may be regarded as unquestionable. You will accordingly apply for reparation in this case.

I am, &c.,

HAMILTON FISH.

Mr. Long to Mr. Hunter.

No. 102.] UNITED STATES CONSULATE,
Panama, May 30, 1871.

SIR: Since my last, No. 101, the revolutionary troubles in this state have all quieted down, and peace once more prevails in all her borders. President Comoro, with a magnanimity unusual in Spanish America, and with a force three times as great as his opponents, has consented to an arrangement with Herrera, by which each party bears off some of the spoils of victory, and the citizens, including foreign merchants, have to foot the bill. After my return from my visit to Captain Selfridge, Colonel Ferrero, the commander of the Colombian or national troops in this state, determined he would send down to David a peace commission to obtain the release of two officers of the Pichincha battalion, stationed in Panama, and who had been captured by Herrera when he made the attempt and captured the suite of the President. I took the opportunity of forwarding the inclosed No. 1 to Captain Stevens, and under its cover the inclosed No. 2 to Herrera; in inclosures Nos. 3 and 4 you will find his reply. Inclosure No. 5 is the sworn statement of Mr. John Schuber, which completely refutes Herrera's charge of Mr. Schuber being in sympathy with the rebellion.

Herrera's statements also of the Montijo having no papers to designate her nationality on board at the time of her capture are false, as the captain had with him my receipt for his register, and other papers belonging to the boat, said papers being in my office in Panama. The Montijo always, except when going out of the jurisdiction of this consulate, deposited her papers in this office and took my receipt for them. As the Montijo carried the mails and dispatches gratuitously between this port and David, she had permission from the state of Panama to run into all her ports and navigable waters without the payment of any fees whatever. His charge as to her having lost her nationality in her previous complicity with rebellions in this state cannot be sustained, as Mr. Schuber had a perfect right to charter his vessel to any party. While engaged in such contracts he, however, lost his protection as an American or neutral vessel. This Mr. Schuber well knew, and he chose to run the risk. The recent case bears no analogy to the first. In the recent case Mr. John Schuber most positively refused, while in David, to charter his vessel to Herrera; he delayed his departure several days, and supposed that their intentions had been abandoned, when he con-

cluded to leave for Panama. My entire action in this case has been based upon the following statements of facts, which are substantiated by the affidavits inclosed. I contend that, even allowing these adventurers the privileges of belligerents, they did not possess these rights till after some organization was made by which they became a power recognized by international law.

The constitution of Colombia, very unwisely, I think, recognizes the right of the citizens of the several states to rebel at any time and throw off the authority of the old state and organize a new one by force of arms. But does that right give any authority to a few daring and adventurous spirits to collect a band or marauders and appropriate private property to their own uses? If that transaction had taken place in Panama, they could, with equal right, have walked into the office of the Pacific Mail Steamship Company, or into that of the Royal Mail Company, or the Pacific Steam Navigation Company's office, and have demanded the treasure that is often found there, it being a very necessary sinew of war.

Mr. Schuber's boat was captured on the 6th of April, 1871, as proved in all the affidavits. Herrera, in his letter to me, says that the provisional government was not organized in David till the 8th of April, two days afterwards, thus showing conclusively that, if he had rights after the 8th of April, in consequence of the organization of his government, he could have had no rights before that except what brute force gave him. I so represented the facts of the case to Commander Selfridge, and he, I thought, entirely concurred with me in my view of the case; but in consequence of the near completion of his explorations, did not deem it advisable to withdraw the Resaca from the Luyn River, being apprehensive that if he did so he would not be able to resume his duties on account of the advent of the rainy season.

Revolutions in this entire country are gotten up in the same way; they are nothing but speculations upon the part of some daring and needy adventurers; and as they have nothing to lose and everything to gain, they commence by collecting a few followers, and then seize upon neutral property and levy heavy contributions upon money and subsistence of the inhabitants who have any means. If these men were once taught that such occurrences and spoliations upon American property would not be tolerated, but that all engaged in such piratical acts would be punished with the pains and penalties attached to such crimes, it would have a most excellent effect in checking that morbid tendency to get up these periodical disturbances.

I have on all occasions cautioned our American citizens to abstain from every act which might be considered as in violation of our neutrality.

When I visited Commander Selfridge I bore to him authority from President Comoro, and also from Colonel Ferrero, commanding the national forces in this state, and both acting as agents of the Colombian government, to visit any of the bays, harbors, and rivers in this state, in search of the Montijo, and to land forces, if necessary, to recapture her and restore her to her owners.

The Montijo has not yet been delivered up to the Messrs. Schubers, but was dispatched by President Comoro to convey the rebel troops back to David, in spite of representations made by me to him, based upon the affidavits of Captain Saunders and Chief Engineer Howard, which are herewith inclosed, (inclosures Nos. 6, 7, and 8.)

I have the honor to be, your obedient servant,

OWEN M. LONG,
United States Consul.

Inclosures

No. 1. Letter to Captain Stevens.
No. 2. Letter to Mr. Herrera.
No. 3. Letter from Mr. Herrera.
No. 4. Letter from Mr. Herrera.
No. 5. Affidavit of John Schuber.
No. 6. Affidavit of Robert Howard.
No. 7. Affidavit of Mrs. Hannah E. Saunders.
No. 8. Affidavit of Captain Saunders.

No. 1.

UNITED STATES CONSULATE,
Panama, May 3, 1871.

TO CAPTAIN STEVENS,
Of the Panama Railroad Company's steamer Winchester:

SIR: Understanding that the vessel which you command, belonging to the Panama Railroad Company, is about to embark for the ports in the upper part of this State,

with peace commissioners and officers of the Colombian government, I would take this occasion to advise you of the delicate position you occupy, and warn you against any infraction of neutrality in the important domestic revolution which has recently occurred in this State. Bearing the flag of the United States, you will do all in your power to secure a cessation of hostilities, and, if it be possible, to secure a restoration to the Messrs. Schuber & Bro. of their steamer Montijo, which has been piratically seized, and is now in the possession of the revolutionary powers in the department of Chiriqui.

You are also empowered to inform those persons who now so unjustly detain and keep the Montijo from her proper owners, that if they do not immediately release the said vessel, that all the available forces of the United States in these waters will be employed in the recapture of the said steamer Montijo, and to all those found in resistance the pains and penalties of piracy will be inflicted.

In testimony whereof I have hereto set my hand and affixed the seal of this consulate at Panama, this day and date above written.

[SEAL.]

OWEN M. LONG,
United States Consul.

UNITED STATES CONSULATE,
Panama, May 29, 1871.

I, Owen M. Long, consul of the United States in and for the port of Panama and its dependencies, do certify that the foregoing is a true and literal copy of a letter from myself to Captain Stevens, forwarded to him on the 3d day of May, A. D. 1871, and recorded in my office in "book of letters," sent as No.—.

In testimony whereof I have hereto set my hand and affixed the seal of the consulate, at Panama, day and date above written.

[SEAL.]

OWEN M. LONG,
United States Consul.

No. 2.

UNITED STATES CONSULATE, *Panama, May* 3, 1871.

To Thomas Herrera and all others whom it may concern:

Mr. Henry Schuber, of the firm of H. Schuber & Bro., of this city, both American citizens and owners of the steamer Montijo, an American vessel, duly registered in the proper office in New York, and whose papers are on file in this office, has entered his protest in the office of the United States consulate at Panama, that his vessel, the Montijo, in the lawful prosecution of her return trip from David to Panama, was captured and taken possession of by you and others, on the 6th day of April last, and that the said vessel is still detained and kept by you from his lawful possession and use: I therefore, as consul of the United States, do, in the name of the United States, demand and require the immediate restoration of the American steamer Montijo to her lawful owners, the Messrs. Schuber and Bro., under the pains and penalties usually inflicted upon those guilty of piratical acts.

In testimony whereof I have hereto subscribed my name and affixed the seal of the consulate at Panama, day and date above written.

[SEAL.]

OWEN M. LONG,
United States Consul.

I, Owen M. Long, consul of the United States at Panama, do hereby certify that the letter on the foregoing pages, written by myself, and forwarded to Thomas Herrera and all others whom it may concern, is a true and genuine copy from the original, recorded in my office as No. —, in book of letters sent.

In testimony whereof I have hereunto set my hand and affixed the seal of the consulate at Panama, this 29th day of May, A. D. 1871, and the Independence of the United States the ninety-fifth.

[SEAL.]

OWEN M. LONG,
United States Consul.

No. 3.

United States of Colombia, executive power of the State of Panama, provisional government, presidency of the state, department of Coele, No. 2.

HEADQUARTERS AT RIVER HATO, *May* 5, 1871.

Mr. Consul of the United States of America:

SIR: In addressing you for the first time I am pleased at being able to inform you that the revolution which took place in the City of David on the 8th day of April last,

and at the head of which the will of my fellow-citizens has placed me, now possesses the departments of Chiriqui, Beraguas, Los Santos, and Coele, where the populace acknowledge the new authorities and give them every class of assistance.

I am equally pleased to be able to inform you that you have nothing to fear for the security of your subjects, because in all places where the new government is recognized they enjoy, as foreigners, all the guarantees to which they have the right as such.

I expect soon to be in possession of the whole state, for I possess sufficient force to subdue the two departments which yet remain under the yoke of the few soldiers of the government which to-day succumbs before the uniform opinion of all the inhabitants of the Isthmus; and meanwhile I promise myself that the friendly relations will not suffer the least alteration which have existed up to now between the Government which you represent and that of our country.

With sentiments of the most distinguished consideration, Mr. Consul, I subscribe myself your attentive servant,

HERRERA.

UNITED STATES CONSULATE,
Panama, May 29, 1871.

I, Owen M. Long, consul of the United States at Panama, certify that the above letter is a true and correct translation of the original in Spanish, as recorded in my office in book of letters received.

In testimony whereof I have hereto set my hand and affixed the seal of the consulate at Panama, this 29th day of May, A. D. 1871.

[SEAL.]

OWEN M. LONG,
United States Consul.

No. 4.

United States of Colombia, executive power of the sovereign state of Panama, provisional government, presidency of the state, department of Coele No. 3.

Mr. Consul of the United States of America at Panama:

SIR: I have the honor to address you for the purpose of stating that I have seen with surprise in La Estrella de Panama of the 27th of April, of this year, that Commander Selfridge, commander of North American naval forces, is disposed to personally interfere with them, and to rescue (ransom) the steamer Montijo, and treat as pirates those who hold her, on the supposition that they have outraged the flag of the United States of America. You will allow me to declare the provisional government has never intended to outrage the North American flag, nor that of any other friendly nation, and if it has taken into its service the steamer Montijo, it has been for the following reasons:

1st. That this steamer, although she carries the North American flag, has no register or other document which proves her nationality.

2d. That, although this steamer were North American, she has lost her neutral character, because she has previously mixed in our political disputes.

3d. That the government is disposed, as it has offered to Mr. John Schuber, to pay for all the service the Montijo may render it.

To this may be added the fact that Mr. John Schuber recognizes and is in harmony with the provisional government, and that this has given him every guarantee he has solicited. I expect that the consul to whom I have the honor to address this will take into consideration the foregoing reasons, and that he will explain to Commander Selfridge that he has no right to interfere with the forces at his command to rescue the steamer Montijo, for all intervention he may exercise in favor of one of the belligerents must be considered as a violation of international law.

Moreover, Mr. Consul, I must observe that the intervention of North American forces in the internal questions of our country will prolong the war, to the prejudice of foreigners.

The assistance which is wished to be given by Captain Selfridge to a government which cannot count upon public opinion and which seeks to sustain itself by foreign forces, although that to-day will not influence the result, will still be a shame for him who begs that assistance, which ought not to be given by the representative of the nation which is the most liberal and just on the face of the globe.

I am, &c.,

HERRERA.

I, Owen M. Long, United States Consul for Panama and its dependencies, certify that the above is a true and correct copy of the translation of the letter received by me in Spanish from Herrera, word for word and figure for figure, as recorded in my book of letters received in my office.

In testimony whereof I have hereto set my hand and attached the seal of the consulate at Panama this 29th day of May, A. D. 1871.

[SEAL.]

OWEN M. LONG,
United States Consul.

No. 5.

I, John Schuber, of the firm of H. Schuber & Bro., of Panama, being duly sworn by the United States consul, at his office in Panama, on this 23d day of May, A. D. 1871, depose and say as follows, to wit:

My name is John Schuber; am 38 years of age; am an American citizen and a partner in the house of H. Schuber & Bro.; we are the owners of the steamship Montijo, running between the ports of Panama and David. Said steamer is an American vessel, duly registered in the proper office in the city of New York. I was on board of her when she was captured by Thomas Herrera and his party. Before she sailed from David for Panama, Thomas Herrera and Domingo Dias met me in the streets of David and proposed to hire or charter the steamer Montijo; I told them that I would not, under any circumstances, charter her to any party contemplating a political revolution, and if that was their object, I protested against chartering her to them or any other person for that purpose. I told them that I could not and would not do so for any money that they could pay me. This conversation was at night, on the 2d, 3d, or 4th of April.

The day after this conversation, Thomas Herrera came to me again and repeated the proposition. He told me that he would not take the steamer from me without my consent. On the morning of the 5th, we took on board our cattle and passengers, the general cargo having been brought on board before the 5th of April. We sailed from David that evening, bound for the city of Panama. We had a full passenger list, among whom were Thomas Herrera and Domingo Dias. I supposed that they were bound for Panama, and did not anticipate any attempt on their part to capture the boat. The Montijo sailed from David under the command of Captain James H. Saunders. We went down the river till near Boca Chico, where we were compelled to anchor and wait for the tide. As soon as the tide served we got up anchor, and were just getting under way, when the chief engineer reported to the captain that the tubes or flues in his boiler had given out, and we accordingly again cast our anchor and repaired our flues. As soon as the tide served the next day we got under way, and proceeded as far as the mouth of the river, when the engineer reported that another of the tubes was leaking, and that it would be dangerous to go to sea without repairing it. We again cast anchor, and at 4½ o'clock p. m., on the 6th of April, I being on deck forward, heard some of the passengers say a vessel was approaching us. As soon as Thomas Herrera saw the vessel, he came to me and asked me to hoist a signal, so that the vessel could come in. I refused to do so, and told him that I was not captain of the ship, and that he must go to the captain for any such orders. He went to the captain, and the captain came to me and said that they wanted him to hoist a signal, which was one of a very unusual character, namely, the ensign at the fore. He said he wanted it done so that the schooner might understand it and come in. I then told Captain Saunders that he was captain of the ship, and to do his duty. Thomas Herrera and party then demanded of the captain the flag, which he positively refused to give up. They then told him that if he did not give it up they would take it by force, which they proceeded to do with drawn revolvers, threatening the captain's life. By force they took the flag from him and hoisted it at the fore. The schooner then immediately came in and anchored close to us. Manuel Dias and Colonel Paris then came on board from the schooner and joined the party that had taken possession of the Montijo.

They then ordered the captain to have steam ready next morning at four o'clock. At four o'clock next morning we proceeded outside to hail a schooner that was in sight. We then returned to the mouth of the river and took the schooner that lay by us the night before in tow, and proceeded up the river some twelve or fifteen miles and came to anchor. The same day we took the arms and ammunition which were on board the schooner on board of the steamer. The boats of the steamer and the schooner were then sent up the stream some distance, and returned with some one hundred and twenty men, who were all embarked on board of the steamer. Some of those men that came on board had arms, others not; the unarmed men were all supplied. About three o'clock that evening we proceeded up to the port of Pedrigal, the port of David. All the men and officers on board of the steamer, with the exception of a guard of two officers and some ten or fifteen men, were disembarked and proceeded to the city of

David, which they captured without much opposition. As soon as the men were disembarked to take David, the captain was ordered to take the ship down the river near the mouth of the Chiriqui, where we came to anchor; he was ordered to remain there till further orders. Early in the morning of the 8th of April the captain was ordered to bring the boat up to Mangota, her usual port. We arrived there about five o'clock that evening, when I left the ship and went to David.

The cattle were now all landed, and the passengers who had been on board all this time, were now permitted to go ashore. After the town of David was captured, and not till then, was there any provisional government established or proclaimed by Thomas Herrera or any other persons. When we left David for Panama the state officers belonging to the government of President Comoro were in office, and forwarded their usual dispatches to the capital.

The Montijo was captured on the evening of the 6th of April; the city of David was captured on the night of the 7th of April, 1871. Next morning, the 8th, the provisional government was proclaimed in David, with Thomas Herrera as provisional president, and Domingo Obaldia was installed as prefect of the department of Chiriqui. We were all considered as prisoners, and none of us, including the captain and crew, were permitted to leave the boat till after the capture of David, when I, with the passengers, were permitted to go ashore. I had permission to leave David for Sona; here I was detained and prevented from leaving till about the 8th day of May, when I chartered a schooner and had to leave the place secretly. I reached Panama on the 17th day of May, 1871.

JOHN SCHUBER.

Sworn and subscribed to before me, Owen M. Long, United States consul at Panama, this 23d day of May, 1871, and the Independence of the United States the ninety-fifth.

OWEN M. LONG,
United States Consul.

UNITED STATES CONSULATE, PANAMA, *May* 27, 1871.

I, Owen M. Long, consul of the United States at Panama, certify that the above statement of facts by Mr. John Schuber is a true and correct copy of the original in my office, and recorded on pages 23, 24, 25, and 26, in the miscellaneous record book.

In testimony whereof I have hereunto set my hand and attached my seal of office, at Panama, this 27th day of May, A. D. 1871, and the year of Independence of the United States the ninety-fifth.

OWEN M. LONG,
United States Consul.

[SEAL.]

No. 6.

Personally appeared before me at my office in Panama, on the 22d day of May, A. D. 1871, Robert Howard, chief engineer of the steamship Montijo, who, being duly sworn, makes the following statement of facts, to which he has subscribed his name in my presence:

My name is Robert Howard, 45 years of age; I have been chief engineer for the Montijo for the last 14 months; was acting as such at the time of her capture by the revolutionists at David. Have been on her ever since. She was captured on the 6th of April last, and has been under steam ever since; the engines have been very much injured in consequence of the want of proper oil; the boilers are in a very unfit condition to go to sea, and I consider the attempt to do so extremely hazardous to the safety of the boat and all on board, and, as chief engineer, I protest against being required to raise steam or set the engines in motion until her boilers and engines have been repaired.

ROBERT HOWARD.

Sworn to in presence of—
OWEN M. LONG,
United States Consul.
LUCIUS CROCKER.

I, Owen M. Long, United States consul in and for Panama, do hereby certify that the above is a true and correct copy of the affidavit of Robert Howard, chief engineer of the steamship Montiji, as recorded on page 18 of miscellaneous record book in my office in Panama.

In testimony whereof I have hereto set my hand and attached my seal of office at Panama, this 29th day of May, A. D. 1871, and the Independence of the United States the ninety-fifth.

OWEN M. LONG,
United States Consul.

[SEAL.]

No. 7.

UNITED STATES CONSULATE,
Panama, May 16, 1871.

Personally appeared before me Owen M. Long, United States consul for Panama, at my office, in Panama, day and date above written, Mrs. Hannah Elizabeth Saunders, wife of Captain James H. Saunders, of the American steamer Montijo, the property of Messrs. Henry Schuber & Bro., American citizens now doing business in Panama, who, after being duly sworn to tell the truth, the whole truth, and nothing but the truth, deposeth and saith as follows: I am the wife of Captain James H. Saunders, of the Montijo; I went on board of the Montijo at David, on the 5th of April, with the intention of coming to Panama. We left David on the evening of the 5th, and anchored, on account of the tide, at Boca St. Pedro, in the David River. Next morning, the 6th, we got up steam, raised our anchors, and proceeded on our voyage. We had hardly gone a ship's length before two of the flues gave out and we were forced to cast our anchors again. In about four hours we succeeded in repairing the flues, so as to start for Boca Chica, the mouth of David River, where we arrived between 12 and 1 o'clock. At this point several more tubes in our boilers gave out, which required some three or four hours to repair. We were making preparations to go to sea when a schooner hove in sight. As soon as the schooner made its appearance, Thomas Herrera and Domingo Dias, with fifteen or twenty other persons who had embarked as passengers from David to Panama, suddenly and without any warning approached the captain and ordered him to hoist his United States flag at the fore. They were all well armed and presented their revolvers at him, and threatened to shoot him if he did not so hoist it. They forcibly took the flag, and he made an effort to retake it, but was met by drawn revolvers and machetes.

The flag was hoisted by them at the fore, when the schooner approached and was towed up the river some little distance, when the arms and ammunition on board of the schooner were transferred to the Montijo, after which the Montijo left and returned to David. She then disembarked the troops which she had received on board while lying in the river, and after she had got the arms and ammunition from the schooner. After sending the troops ashore, she proceeded down the river a short distance and remained there the till next afternoon's tide, which was the 8th day of April. As soon as the tide served they came up the river to their old landing, and put all the cattle, arms, and ammunition ashore. The said cattle were embarked at David for Panama. We supposed that we would make a good trip, as she was full of passengers and freight. Mr. John Schuber, one of the owners of the Montijo, was on board, and refused to acquiesce in the seizure of the flag and boat, and, with Captain Saunders, protested against their acts. From the hoisting of the flag at the fore, they took possession of the ship, and she still remains in their possession till the present time.

Neither Herrera, or Dias, or any other person or persons ever proclaimed themselves as revolutionists, or as being in arms against the government of Panama, till after the capture of the Montijo. Captain Saunders and the entire crew of the Montijo were taken prisoners and have been forcibly detained on board till this present writing. They refused me the privilege of coming ashore here, but I insisted upon it, and, after much remonstrance, I was sent off from Toboga in a small-boat and reached Flamenca in time to take the tow-boat Panama to Panama. From the time of the capture of the Montijo till the present, Herrera and Diaz have been apprehensive of a rescue by the United States ship Resaca, and have always kept her in shallow water or up in small rivers to keep her out of the reach of the Resaca.

HANNAH E. SAUNDERS.

Witnesses: OWEN M. LONG,
United States Consul.
LUCIUS CROOKER.

Sworn and subscribed to before me, at my office in Panama, day and date above written. In testimony whereof I have hereto set my hand and attached my seal of office this day and date above written.

[SEAL.]

OWEN M. LONG,
United States Consul.

Recorded in miscellaneous record book, page 27.

No. 8.

Personally appeared before me at my office in Panama, this 22d day of May, A. D. 1871, James H. Saunders, master of the American steamer Montijo of New York, who, being duly sworn, has made and subscribed to the following statement of facts, viz:

My name is James H. Saunders, master of the steamer Montijo, an American vessel registered in the port of New York. I was in command on the 6th day of April, 1871, when she was captured by Thomas Herrera and others. We left David on the 5th of April last, bound for Panama, and had proceeded as far as Boca Chica, at the

mouth of the river David, when, in consequence of the bursting of the tubes in the boiler, we could not proceed to sea, and were compelled to cast anchor till our boilers were repaired. Before we were able to make the necessary repairs, at about 4½ o'clock, p. m., Thomas Herrera, with some nine others, who all of them had taken passage for Panama, having recognized a signal made by a schooner approaching us from the southwest, suddenly presented themselves to me, and with arms in their hands required me to hoist the American flag at the fore. This I refused to do, supposing it was a signal for the schooner to attack and capture the Montijo, never for a moment supposing that the party on board had any idea of capturing us.

I refused to do such an unusual thing, and told them so, at which they said they would hoist it themselves, and proceeded, forcibly and violently, to remove the flag from my possession. My life was threatened by them, and I was unwillingly forced to submit to have the flag hoisted at the fore. I was then told by Thomas Herrera that I must consider the Montijo as captured and in possession of themselves, and that I must also consider myself and crew as prisoners, and that they would not suffer us to leave or abandon the boat.

At the time of capture we had on board a full cargo, consisting of cattle, freight, and passengers, and were expecting to make a profitable trip.

The schooner had come close alongside of us and cast her anchor. On the evening of the 6th, Mr. Herrera ordered me to have steam up and be ready to sail by 4 o'clock next morning, the 7th of April. At 4 o'clock next morning we left our anchorage and proceeded out of the mouth of the river to sea, and hailed a small schooner, when we returned to our former anchorage and took in tow the schooner which had been lying alongside us.

We then took from the schooner all the arms and ammunition on board of said schooner. While we were engaged in taking on board the arms and ammunition from the schooner, Thomas Herrera ordered all the boats up the river, and in a short time the boats returned to the Montijo, filled with soldiers. They made some three trips up the river, returning each time with their boats filled with men, who were all put on board of the Montijo.

At 3 o'clock p. m. on the 7th of April, 1871, I was ordered to leave for Petrigall, the port of David, where we arrived at 5 o'clock p. m. The troops, with the exception of two officers and fifteen men, were then disembarked. These two officers and fifteen men were left on board as a guard. I was then ordered, by them, down the river about fifteen miles, where we came to anchor and lay till about 4 o'clock p. m. of the 8th. That morning, at 9 o'clock a. m., I received orders to take the boat to Mangota, the regular landing port of the boat. We arrived there at 5 o'clock p. m. the same day. About thirty men came on board and relieved the guard; we then hauled into the dock and landed all the cattle which had been kept on board till this time. The next morning all the arms and ammunition were landed. We lay here till the morning of the 12th of April. The guard on board were now relieved by some seventy-five or eighty men, in command of one Colonel Franchori and other officers. At 9.30 a. m. on the 12th, I was ordered to go to sea; after getting out to sea, I was ordered to proceed to Munche, the port of Los Tablas, where we arrived at 10 o'clock a. m. of the 13th. I now learned that the party which captured the steamer was in revolution against the regular and constitutional government, and that their object in going to Los Tablas was to capture the president, General Comoro.

When the steamer was first captured and taken possession of I protested against all such acts, and told them that I would do nothing except upon compulsion; to this they replied that was easy enough to do, and warned me against any refusal to do their orders. We reached Los Tablas on the 13th at 10 o'clock a. m. They then sent spies up to Los Tablas and found that the president, Comoro, was expected there that night. At 6 o'clock p. m. on the 13th, the troops on board were landed, leaving a guard of fifteen men on board, with one officer, who had charge of the boat. From this till the 22d day of May, 1871, I was forcibly detained on board and allowed no communication whatever with shore. At 10.30 o'clock a. m., the 22d day of May, I left and came ashore to make this my statement of the facts in this case.

The ship at this time was lying about five miles out from Panama. When I left the officer in charge protested against my leaving the ship; I would also give it as my decided opinion that in the present condition of the Montijo she is entirely unseaworthy, her boilers requiring repairs, and her machinery needing also many repairs. Sending her to sea in her present condition is a great risk.

J. H. SAUNDERS, *Master.*

Signed in presence of:
OWEN M. LONG,
United States Consul.
LUCIUS CROOKER.

Sworn and subscribed to before me, this 22d day of May, A. D. 1871, at my office in Panama, and the Independence of the United States the 95th.

OWEN M. LONG,
United States Consul.

UNITED STATES CONSULATE,
Panama, May 30, 1871.

I, Owen M. Long, consul of the United States in and for Panama, that the above affidavit or statement of facts by Captain Saunders is a true and correct of the original, as recorded in my book of miscellaneous records, on pages 19, 20, 21, and 22.

In testimony whereof I have hereunto set my hand and affixed the seal of the consulate at Panama, day and date above written.

[SEAL.]

OWEN M. LONG,
United States Consul.

No. 54.

Mr. Hurlbut to Mr. Fish.

No. 53.] LEGATION OF THE UNITED STATES,
Bogota, July 3, 1871. (Received July 31.)

SIR: I have just received a communication from Señor Zapata, in which he informs me that he has made application through the Colombian minister in Washington for an extension of time on the balance of the Panama claim. His proposal is to pay in equal annual installments, to be complete in four years. This government is at present bankrupt. Their whole available revenue is about $800,000; of this they have lost $250,000 by the failure of the Panama Railroad. They have been compelled to suspend all works of internal improvement; they have cut the army down to 1,000 men; have reduced all salaries 10 per cent. and it is simply impossible for them to pay as things now are.

The extension sought will be gratefully received, and is, I think, as safe an arrangement as can be made.

I am, &c.,

S. A. HURLBUT.

No. 55.

Mr. Hurlbut to Mr. Fish.

No. 55.] LEGATION OF THE UNITED STATES,
Bogota, August 5, 1871. (Received September 1.)

SIR: I received by last mail your dispatch No. 43, of date 21st June, in relation to seizure of steamer Montijo.

I have presented your views, as indicated in the same, to Señor Zapata, secretary for foreign affairs, together with copies of the affidavits accompanying your dispatch.

I believe, however, that it will be found that the national government is powerless to punish the piratical acts of Herrera and his crew through any judicial tribunals known in this country, and that the outrage committed and unredressed will require other action than can be obtained through the courts of Colombia.

As soon as I receive the reply of Señor Zapata I will at once forward it to the Department.

I am, &c.,

S. A. HURLBUT.

No. 56.

Mr. Hurlbut to Mr. Fish.

LEGATION OF THE UNITED STATES,
Bogata, August 17, 1871. (Received October 2.)

SIR: I forward, as an inclosure, translation of dispatch from Señor Zapata on the subject of the steamer Montijo. The president is no doubt sincere in his wishes, and pledges to pursue judicially Herrera and his companions; but I feel sure that no probability exists of any satisfactory punishment being awarded. Unfortunately, the proceedings in the first instance must be brought in the state courts of Panama; tribunals of wretched character and notorious venality. The legitimate government of Panama concluded a formal treaty of peace with these insurgents, granted an amnesty for all offenses, and elected one of their leaders (Franceschi) to congress.

Although this offense was beyond their power to condone, the effect of the amnesty upon the court below will be very great. The questions really involved will probably not be decided until the cause shall reach (by appeal) to the federal supreme court held in this city.

I hope that the Colombian courts may be able to convict and punish in this case, as such conviction, acting directly upon the guilty parties, will be far more valuable than reclamation for damages, to be paid from the general treasury of the nation; but the inherent weakness and venality of their judicial system is so great that my hope is against my judgment. I have not forwarded to the Department my own communication to Señor Zapata, to which the inclosed is a reply; it is rather long, as it contains a statement of the testimony arranged from the affidavits forwarded to me, and inasmuch as Señor Zapata readily conforms to the demand for reparation by judicial proceedings, it is not worth while to copy the demand itself, unless the Department desires to be in possession of the whole correspondence.

I am, &c.,

S. A. HURLBUT.

[Translation.

DEPARTMENT OF THE INTERIOR AND OF FOREIGN RELATIONS,
Bogota, August 16, 1871.

MR. MINISTER: The executive power has very attentively considered the reclamation which your excellency has presented in the name of the Government of the United States of America, to the end that the captors of the steamer Montijo may be tried and punished in accordance with the laws of the country, in satisfaction for the wrongs which your excellency claims to have been committed against the personal security and the property of American citizens, and the insult offered to the flag of the United States.

The reclamation of your excellency and the accompanying documents have been transmitted to the attorney general of the nation in order that he may pursue the proper legal course before the proper judges.

On his part the president will see to it that the judicial proceedings shall pursue their course without any delay, and your excellency may be satisfied that the justice of the country will be faithfully administered.

The undersigned improves this occasion to renew the assurances of his most distinguished consideration, and subscribes himself your obedient servant,

FELIPE ZAPATA.

Correct translation.
S. A. HURLBUT.

No. 57.

Mr. Hurlbut to Mr. Fish.

No. 58.] LEGATION OF THE UNITED STATES,
Bogota, August 27, 1871. (Received October 14.)

SIR: I have the honor to inclose a copy of my dispatch to Señor Zapata on the affair of the Montijo. His reply was forwarded by last mail.

I believe that, in the hurry of doing up the last mail, I neglected to number my last dispatches. They are numbered on my records 56 and 57.

Your obedient servant,

S. A. HURLBUT.

LEGATION OF THE UNITED STATES,
Bogota, August 3, 1871.

The undersigned, minister resident of the United States of America, has the honor to present his respects to the honorable Felipe Zapata, secretary for foreign relations, and to inform him that he is instructed by the honorable the Secretary of State of the United States to present the demand of the United States of America upon the government of Colombia for reparation for the recent outrageous acts of Thomas Herrera and others, in the State of Panama, in this case of the American steamer Montijo.

The facts indisputably proven in this case are these: The aforesaid steamer Montijo was an American vessel, lawfully registered as such, with her proper papers and evidences of nationality. She was under the flag of the United States, engaged in the lawful business of carrying freight and passengers from the city of Panama to other ports of that state.

Her owners are American citizens, residing in the city of Panama.

In the usual course of her legitimate business as a trading-vessel, the Montijo was in the port of David in said state. One of her owners, John Schuber, was on board. About the 2d or 3d of April, 1871, while still in said port of David, Thomas Herrera and Domingo Diaz proposed to Mr. Schuber to charter his steamer. Schuber, suspecting some revolutionary movement on their part, positively refused, and gave such suspicion as his reason for refusing.

On the 5th of April, the steamer, having taken on board her cargo and her passengers, sailed from David bound for Panama. She had a full list of passengers, among them Domingo Diaz and Thomas Herrera. On the morning of the 6th of April the Montijo, being then at anchor at Boca Chica to repair her boilers, a schooner appeared in the offing, upon sight of which Herrera and Diaz demanded of Schuber, the owner, and of Saunders, the captain, that they should set the American ensign of the steamer in a manner indicated by them. Both refused to do so, as it was evidently a preconcocted signal. Herrera and Diaz, and their friends on board the Montijo, then took the flag from the captain's possession by force, threatening him with drawn revolvers.

They then proceeded to set the ensign, upon which the schooner came alongside, and Manuel Diaz and a Colonel Parés, and some others, joined the party who had thus forcibly usurped possession of the Montijo.

From that time, for many days, this steamer was held by this band of pirates, used by them in making war upon the constitutional government of Panama, her officers and crew compelled, by threats and violence, to remain prisoners on board their own vessel, and to work her as ordered by her captors. The vessel itself, the boilers and machinery, were injured and damaged by such use, her stores were used up and destroyed, her insurance periled, her regular and legitimate business broken up, and the whole equipment of ship and crew diverted from legitimate commerce and made involuntary parties in the disgraceful internal quarrel between rival aspirants for power in the state of Panama.

I am instructed to state to the government of Colombia that, in the opinion of the Government of the United States of America, the acts aforesaid, committed by Thomas Herrera and others, his partisans, constitute the high crime of piracy, and deserve the most severe and condign punishment.

This offense, it is to be remarked, was not perpetrated upon the high seas, but in the navigable waters whose exclusive jurisdiction is with the republic of Colombia.

The right and the duty of punishing the perpetrators of this high crime rest upon the country within whose jurisdiction the offense was committed.

I am instructed to apply for reparation for the insult offered to the American flag within the waters of Colombia; for the highly criminal and piratical act of seizing by force and arms a peaceable American vessel; of reducing her owner, captain and crew to the condition of prisoners, and so holding them for many days, making them unwilling agents of a nefarious conspiracy against peace and good order, periling their lives and health in such enterprise, injuring the property of the owners of the steamer, and for all other damage which may have accrued or may accrue from such unlawful and felonious acts.

It is, therefore, reasonably expected by the United States of America that the perpetrators of these high-handed outrages will be vigorously prosecuted, under the laws of the United States of Colombia, to conviction for the crime of which they are evidently guilty.

This reparation by judicial punishment is due to the dignity of the nation whose flag has been insulted, and whose citizens have been imprisoned, and also to the dignity of the republic within whose waters so gross an outrage has been committed.

The undersigned is unofficially informed that some arrangement for an arbitration has been entered into by the owners of the steamer. The United States of America have nothing to do with any disposition made by them as to their private loss and injury, the question more immediately concerning the Government at this time being adequate and prompt punishment, by judicial proceedings against the criminals, for the offenses stated.

The undersigned may be permitted to state, in addition to the foregoing, that the fact that the outrages complained of occurred in the course of one of the numerous revolutions which unfortunately afflict this country, does not, in his judgment, constitute the slightest excuse for the acts complained of.

The revolution itself, in his opinion, was a crime, which the laws and usages of Colombia may mitigate, condone, or excuse; that, so far as affects Colombian citizens only, is a matter for Colombia alone. But when such a pretended revolution, not against the general government, but against a particular state government, assumes to violate the laws of civilized nations, the treaty stipulations of their own country, and the sovereignty of a foreign friendly nation over its own ships and its own flag, it is taken out of the category of domestic disorders, and arrives at the dignity of an offense against civilization, and must be promptly and effectually punished.

In the full confidence that the judicial power of Colombia is competent to administer complete and effective justice against the criminals indicated for the acts perpetrated by them, the undersigned, on behalf of his Government, has the honor to renew the request that all necessary steps may be taken by the executive power to bring about so desirable an end.

The undersigned also has the honor to present herewith the sworn statements of John Schuber, Robert Howard, Mrs. Hannah E. Saunders, and Captain Saunders, the originals of which are on file in the office of the United States consul at Panama, and which are believed to be absolutely true in all substantial matters, and has the honor to be, &c.,

S. A. HURLBUT,
Minister Resident, United States America.

No. 58.

Mr. Fish to Mr. Hurlbut.

No. 46.] DEPARTMENT OF STATE,
Washington, October 11, 1871.

SIR: Your dispatch of the 17th of August last has been received. It is without the number required by your personal instructions, which you will be careful to attach to all public dispatches. It is expected that the offenders in the case of the steamer Montijo will be prosecuted without any delay which can be avoided. A copy of your note to the Colombian minister for foreign affairs on the subject, which you have omitted to send, would be acceptable. A copy of one which the Department has recently addressed to Mr. Perez, the minister of Colombia here, relative to the postponement of the payments of the amount due under the claims convention with New Granada, is herewith transmitted for your information.

I am, &c.,

HAMILTON FISH.

No. 59.

Mr. Fish to Mr. Hurlbut.

No. 48.] DEPARTMENT OF STATE,
Washington, October 24, 1871.

SIR: I transmit a copy of a letter of the 20th instant, addressed to this Department by David Hoadley, president of the Panama Railroad Company, setting forth the reasons for the failure of that company to pay the subsidy due by them to the Colombian government on the 15th of August last, and subsequently. The letter also represents that information had been received that that government had directed its attorney general to commence suit against the company on the isthmus for the amount due, and to attach the company's property for double that sum. A clause of the contract of the company is quoted to show that such a proceeding would be in violation of that instrument.

This Government must presume that, in entering into the contract, the company acted with deliberation, took into consideration both the ability and the disposition of the Colombian government to fulfill its part of the bargain, and its own ability to do the same under any contingencies, however unexpected or adverse. The abstract right of that government to hold the company accountable for any breach of the contract will not be questioned. This Government, however, will expect that if the Colombian government should deem it advisable to hold the company to the literal performance of their part of the contract, that it will itself be guided, in enforcing the penalty, by a strict observance of the terms. If, however, that government should take a more liberal view of the subject, and should cancel the contract of 1867, as proposed by the company, this Government, in view of the large interests of esteemed citizens embarked in the enterprise, would regard that course as a proof of a friendly disposition on the part of Colombia. It is not usual for this Government officially to interfere in matters of contract between citizens of the United States and foreign governments. There is no determination to disregard the rule in this instance. The considerable public interests involved in the matter may, however, be deemed to warrant you in at least making such informal representations upon the subject as may induce that government to pause in committing any harsh and premature act to the prejudice of the company. This course you will consequently pursue.

I am, &c.,

HAMILTON FISH.

CORRESPONDENCE BETWEEN THE DEPARTMENT OF STATE AND THE COLOMBIAN LEGATION AT WASHINGTON.

No. 60.

Mr. Perez to Mr. Fish.

LEGATION OF THE UNITED STATES OF COLOMBIA,
Washington, D. C., February 7, 1871. (Received February 7.)

MR. SECRETARY: I have received instructions to solicit the issue of such orders as may be thought necessary, to the end that Colombian vessels may be treated in the ports of the United States to which they may convey merchandise, when the latter does not proceed from any other ports of the said United States in the same ocean, in the same

manner as (are other) American vessels employed in the same trade; that is, "that neither distinct nor higher duties be collected for the tons of the vessel or for its cargo, be the importation made in vessels of the one or of the other country," as is stipulated in article 4 of the treaty of December 12, 1846, between New Granada and the United States.

By said treaty it was settled, as to commerce and navigation, that there should be perfect equality and reciprocity between the two countries, and indeed within the Colombian territory. Merchandise arriving there or going out under the American flag is free from every discriminating duty.

I deem it unnecessary now to enumerate the advantages which the United States have derived, almost exclusively, from the traffic and the transit across the isthmus of Panama since the ratification of the treaty.

I only need say that Colombia now desires to make use of the equality therein stipulated, in order to insure the establishment of a line of steam-vessels, to encourage commercial relations between the two countries with reciprocal and increasing benefit.

I have the honor, &c.,

S. PEREZ.

No. 61.

Mr. Fish to Mr. Perez.

DEPARTMENT OF STATE,
Washington, February 8, 1871.

SIR: I have had the honor to receive your note of yesterday, stating that you had received instructions to solicit the issue of such orders as may be thought necessary, to the end that Colombian vessels may be treated in the ports of the United States to which they may convey merchandise, when the latter does not proceed from any other port of the United States in the same ocean, in the same manner as American vessels employed in the same trade. Your note further adverts to the fact that the privilege desired was secured by the treaty between the United States and New Granada of the 12th of December, 1846.

In reply I have to state that, as your request seems to imply an opinion on the part of your government that the treaty adverted to has been definitively terminated, it is deemed advisable to hold the application under consideration until no doubt shall remain upon that point. The 35th article of the treaty stipulates that it shall last for twenty years from the exchange of ratifications, which took place on the 10th of June, 1848. The same article further provides, "Notwithstanding the foregoing, if neither party notifies to the other its intention of reforming any of or all the articles of this treaty, twelve months before the expiration of the twenty years stipulated above, the said treaty shall continue binding on both parties, beyond the said twenty years, until twelve months from the time that one of the parties notifies its intention of proceeding to a reform."

It appears that under date the 23d of January, 1867, General Salazar, then accredited to this Government as envoy extraordinary and minister plenipotentiary of the United States of Colombia, addressed to this Department a note from New York, in which he stated that he had been instructed to set on foot a negotiation for the purpose of renewing the treaty prior to the termination fixed in the 35th article.

The receipt of this note was acknowledged in one from the Department of the 29th of January.

With another note of the 23d of April, 1867, General Salazar transmitted a copy of the changes which his government desired in the treaty, and offered to discuss the subject at such time as might be appointed for that purpose.

It does not appear that any reply was made to the last-mentioned note, or that the discussion proposed by General Salazar took place. There is also nothing on record or on file here to show that the notes of General Salazar referred to were regarded and received as such a termination of the treaty as that for which the instrument itself provides.

Nor does it appear that the Secretary of the Treasury of the United States has been informed that the treaty is at an end, and, therefore, that the privileges previously enjoyed under it by Colombia in the ports of the United States must be discontinued. Indeed, so far as this Department is aware, those privileges, including the one requested by Mr. Perez, are still enjoyed by Colombian vessels and their cargoes. In any event, before a definitive answer can be given to your application, or your request can be complied with, it will be necessary for you to state that, from your own knowledge, a similar privilege is enjoyed by vessels of the United States and their cargoes in the ports of Colombia.

I avail, &c.,

HAMILTON FISH.

No. 62.

Mr. Perez to Mr. Fish.

LEGATION OF THE UNITED STATES OF COLOMBIA,
Washington, February 13, 1871. (Received February 14.)

MR. SECRETARY: In the communication which I had the honor to address you on the 7th instant, it was not my intention to state that, in the opinion of my government, the treaty of 1846 between New Granada, now the United States of Columbia, and the United States of America had become null and void.

On the contrary, in soliciting, as I did, the issue of certain regulations, and in basing this request expressly on the provisions of the treaty, I think I recognized that it is now in force, and I have received no instructions whatever to present any observation against this.

It is, moreover, obvious that when my government thinks proper that any modifications should be introduced into said treaty, it will propose them to that of the United States, as it did in the cases which you have been pleased to mention.

With respect to the manner in which trade is carried on between the two countries, and to the necessity of issuing regulations to cause the observance of the treaty in respect to trade, I think it will be sufficient to state the following facts, and to make the following observations:

American vessels convey goods to the isthmus of Panama, or go there to receive them, and no tonnage duty is there required of those vessels. In Colombia, no duty is required, nor are goods brought to the isthmus by American vessels, or goods which, passing over it, are re-exported, likewise in American vessels, subjected to any detention. These same goods, which are, in reality, imported into Colombia, which pass over fifty miles of its territory, and which are re-exported from it, are con-

sidered, as regards the payment of duties in the United States, as if they were only directly transported from one place to another of its territory, and without leaving the same.

Regulations exist in order that goods which, before crossing the isthmus, have paid the proper duty in the United States, may not be obliged, on returning to said United States, again to pay the same duty. Perfect equality and reciprocity as to commerce and navigation having been established between the two countries by the treaty of 1846, it is evident that Colombian vessels have the right to carry on this trade with the same advantages with which it is carried on by American vessels, and across the isthmus of Panama. This trade cannot be included in the only exception which exists to that perfect equality and reciprocity, since it embraces territory of the one country and territory of the other country, and since the benefits which are derived from it proceed as much from the extent and productions of the one, as from the exceptional situation and liberality of the other.

But as the present regulations relative to said trade refer only to goods conveyed in American vessels, in order that this reciprocity may be effective, it is necessary to extend said regulations to goods conveyed in Colombian vessels.

Otherwise, the latter will be unable to carry on said trade, because they will have to take the goods when they have already paid the proper duty in the United States, and will again be obliged to pay the same duty on importing them definitively into the same United States.

Not to extend such regulations to Colombian vessels would be, therefore, to deprive them of the right of engaging in a traffic identical with that which is now carried on between the two countries in American vessels, since without the extension of the regulations there is in reality a double duty imposed on goods conveyed from one point to another of the United States, crossing the isthmus of Panama in vessels which are not American.

This is a discriminating duty, and therefore a duty which, according to the treaty, cannot be imposed upon the cargoes of Colombian vessels. If there had previously been Colombian vessels engaged in this trade, there is not the least doubt that, in accordance with the treaty, the regulations would have been extended to them. But as the effort is now being made to establish them in this trade, on account of the present urgent necessity of reviving commerce between the two countries, a request in accordance therewith is presented. The honorable Secretary perfectly understands the importance of multiplying the means of communication between the two Americas for the best service of their interest and their common aspirations, and he is also aware of the advantages of a new line of steamers, sustained by Americans of skill and experience, like the one which it is proposed to establish between Colombia and the United States, and which may very well be extended to the Antilles, to Central America, and to other nations of South America.

With this reply to your note of the 8th instant, I have the honor, &c.,

S. PEREZ.

No. 63.

Mr. Fish to Mr. Perez.

DEPARTMENT OF STATE,
Washington, February 16, 1871.

SIR: I have had the honor to receive your note of the 13th instant, on the subject of discriminating duties on Colombian vessels from Atlantic ports of that republic to similar ports of the United States. In reply I have the honor to state that, as the subject is obviously an important one, deliberation will be necessary properly to decide in regard to it. The opinion of the Secretary of the Treasury will be required for that purpose. This will be requested, without any delay which can be avoided.

I avail, &c.,

HAMILTON FISH.

No. 64.

Mr. Perez to Mr. Fish.

LEGATION OF THE UNITED STATES OF COLOMBIA,
Washington, April 15, 1871. (Received April 15.)

MR. SECRETARY: On the last occasions when I had the honor to confer with you, you were pleased to state to me that the treaty ratified in 1848, between Colombia and the United States, may now be considered as no longer in force, according to the third part of its thirty-fifth article, because Colombia declared its intention of reforming it, as is seen in the notes which its minister sent to the Department of State on the 23d of January and 23d of April, 1867. You will permit me to repeat, in the present communication, my remarks in relation to this declaration, to the end that this point may be definitely settled, and that I may then inform my government thereof.

In the first of said notes the Colombian minister gave notice that he was authorized to negotiate the renewal of the treaty before the expiration of the term fixed in its thirty-fifth article. It appears, therefore, that the main object was to renew the treaty, and to renew it in time. The modifications referred to only tended, in case of their acceptance, to perfect the relations between the two countries, the strengthening of which the Colombian minister said was the desire which actuated him.

Such documents cannot, therefore, be considered as a notification of the cessation of the treaty, and, in fact, they have hitherto not been so considered. In both countries the treaty has been and still is considered as being in force, and as the basis of their mutual friendly relations. It would be possible, if necessary, to find antecedents of both governments in which the treaty has been, since those notes, recognized as being in force. The government of Colombia has recognized it as being in force by founding on it all the proceedings which it has initiated with the Department of State, and the American Government has recognized it as being in force under your esteemed signature, and that at a very recent date.

In your communication of the 8th of February last, after stating the contents of the notes of the Colombian minister, in 1867, and quoting

the provisions of the treaty relative to its remaining in force, and to the manner in which it was to terminate, you said as follows:

It does not appear that any reply was made to the last-mentioned note, or that the discussion proposed by General Salgar took place. There is also nothing on record or on file here to show that the notes of General Salgar, referred to, were regarded and received as such a termination of the treaty as that for which the instrument itself provides. Nor does it appear that the Secretary of the Treasury of the United States has been informed that the treaty is at an end, and, therefore, that the privileges previously enjoyed under it by Colombia, in the ports of the United States, must be discontinued.

In your note of the 16th of the same month you deigned to notify me that, in the matter which I had submitted to your consideration as connected with the treaty and depending upon it, the opinion of the Secretary of the Treasury had been asked.

Up to those dates, therefore, the American Government entertained no doubts of the treaty's being in force.

Subsequently, in relation to this matter, my reply has only been sent to your note of February 8, in which reply I stated that the instructions of my government are, to proceed in accordance with the treaty; and when my government may think proper to introduce any modifications in said treaty, it will propose them in due form. I therefore think that the American Government will have no objections to recognizing and declaring, now, that the treaty of 1848, between Colombia and the United States is, and has not ceased to be, in force according to its own provisions.

Meanwhile I avail myself of the occasion, &c.,

S. PEREZ.

No. 65.

Mr. Fish to Mr. Perez.

DEPARTMENT OF STATE,
Washington, May 27, 1871.

SIR: Your note of the 15th ultimo, relative to the treaty between the United States and New Granada of the 12th of December, 1846, was duly received. Almost ever since, however, my attention has been so engrossed by other important business that it has been inpracticable to secure the leisure necessary to arrive at a satisfactory conclusion upon that subject. Now, however, I am happy to be able to announce that although literally and technically, pursuant to the clause of the 35th article of that instrument upon the subject, this government might hold that the application made by General Salgar for a revision of the treaty in anticipation of a lapse of the time fixed for its termination might be held to have brought about that result, the intentions of the parties at the time may, as you observe, be allowed to govern the question. General Salgar in his notice did not say that if his proposition should not be accepted the Colombian government would regard the treaty as at an end, and Mr. Seward does not appear to have received that proposition as a formal notice of termination. His silence upon the subject may fairly be construed as indicative of an opinion on his part that, so far as the interests of the United States were concerned, no change in the treaty was required, and the form of the application of Colombia may also be construed to imply that, although she might prefer the changes proposed in that application, she did not regard them as indispensable to its continuance. Under these circumstances it may be said

to comport with the interests of both parties to look upon the treaty as still in full force, but as subject to revision or termination in the form and upon the terms stipulated.

The instrument, upon the whole, is believed to have been mutually advantageous. It is true that the flag of Colombia may not have as often been seen in the ports of the United States as that of the latter in the ports of Colombia. This, however, should not be imputed to any defect in the treaty, but rather to the different circumstances of the two countries. A principal object of New Granada in entering into the treaty is understood to have been to maintain her sovereignty over the Isthmus of Panama against any attack from abroad. That object has been fully accomplished. No such attack has taken place, though this Department has reason to believe that one has upon several occasions been threatened, but has been averted by warning from this Government as to its obligation under the treaty. This Government has every disposition to carry the treaty into full effect. If, in the opinion of Colombia, the Executive of the United States should have insisted upon a construction of the clause prohibiting the coasting trade of one country to the vessels of the other, incompatible with that equality in matters of trade and navigation which other articles of the instrument promise, the merchants of Colombia may on proper application to the courts of the United States have their rights under the treaty vindicated.

We heartily desire any practicable and advantageous increase in the commercial intercourse between the two countries, and are by no means so selfish as to prefer that this should be carried on exclusively under the flag of the United States, especially if we should have promised that Colombia may share therein on equal terms. Recent events, which it is needless to particularize, may have made the transit of the Isthmus of Panama less indispensable to communication between the Territories of the United States on the Atlantic and those on the Pacific than when the treaty was concluded. Similar events, however, may, it is hoped, soon impart increased activity to other traffic between the United States and Colombia to the mutual advantage of both countries.

I avail, &c.,

HAMILTON FISH.

No. 66.

Mr. Perez to Mr. Fish.

LEGATION OF THE UNITED STATES OF COLOMBIA,
Washington, May 3, 1871. (Received May 4.)

MR. SECRETARY: As I have had the honor to state to you, my government desires commercial relations between our countries to be increased as far as is suitable to both, and to this end I have solicited the co-operation of the United States, in accordance with the treaty, with regard to which I have not received a definitive reply.

Meanwhile, in obedience to special instructions, I beg you to be pleased to inform me whether the American Government is disposed to aid with a subsidy a line of steam-vessels which it is proposed to establish between the ports of Columbia and those of the United States. As the government of Colombia is disposed to grant a subsidy to said steamers, and to grant them such other advantages as are in its power, the establishment of the line, if aid can be obtained from the United States, will be much more probable.

If your reply is favorable, I shall take much pleasure in communicating it, together with the circumstances and conditions which shall be required by the United States. The two governments may thus act in harmony, and with the promptness which the matter demands.

I avail, &c.,

S. PEREZ.

No. 67.

Mr. Fish to Mr. Perez.

DEPARTMENT OF STATE,
Washington, May 11, 1871.

SIR: I have the honor to acknowledge the receipt of your note of the 3d instant, inquiring if this government is disposed to contribute a subsidy toward aiding a line of steamers, which it is proposed to establish between the ports of Colombia and those of the United States.

In reply, I have the honor to inform you that it is the exclusive province of Congress to grant a subsidy for the purpose to which you refer. That body is not now in session, but at its next meeting a copy of your note will be communicated for the consideration of the proper committees.

The President heartily reciprocates the wish which you express on behalf of your government, that the commerce between the United States and Colombia may be increased so far as may comport with the interests of both countries.

I avail, &c.,

HAMILTON FISH.

COSTA RICA.

No. 68.

Mr. Fish to Mr. Blair.

No. 48.] DEPARTMENT OF STATE,
Washington, January 21, 1871.

SIR: This Department has received a note from the minister for foreign affairs of Costa Rica, requesting a detail of two scientific engineers for the purpose of surveying a route for a wagon-road or railway between San José and the Atlantic.

In the note a promise is made that the salaries and expenses of the engineers shall be promptly paid. Inclosed is the reply of the Department under a flying seal which you may close after reading the answer, which you will then deliver to Mr. Montufar.

You will notice that although his request has been acceded to, the names of the engineers have not yet been determined upon and nothing is said about their compensation and expenses.

Before they set out, however, it may be prudent that some definite provision, for the latter at least, should be made in advance by that government.