Mr. Marsh to Mr. Fish.

No. 512.]

LEGATION OF THE UNITED STATES,
Rome, September 18, 1874. (Received October 14.)

SIR: Your instruction No. 433, dated August 4, authorizing me to accept the umpireship of the Italo-Swiss boundary arbitration, was received in due course of mail. An official request to that effect had been made, in the mean time, by the arbitrators, in accordance with the terms of the convention between the two countries, and I formally signified to them my acceptance of the duty.

I hoped so to arrange the time of meeting that the labor of the board could be completed before the expiration of my leave of absence, but the distance of the parties and the miscarriage of one or two communications prevented the accomplishment of this wish, and immediately after my return to Italy I proceeded to Milan, where the first conference was to be held. It was the opinion of both arbitrators that, previously to entering upon any proof or discussion, the arbitrators, umpire, and agents should personally inspect the territory in dispute. I concurred in this opinion, and we accordingly repaired to the frontier in question. The Alp, a mountain pasturing-ground of Cravairola, which is the debatable district, is an irregular triangle, containing about forty-five hundred acres, lying on the eastern slope of the mountain-chain which forms the water-shed between the Italian valley of the Toceria or Tosa, and the Swiss valley of the Maggia, in the canton Ticino. The Tosa and the Maggia both empty into Lago Maggiore, the former near Pallanza, the latter near Locarno. The height of the pastures of Cravairola above the sea is from forty-five hundred to nine thousand feet, and they are accessible by rugged mule-paths from the town of Crodo, in the Val Tosa, and from that of Campo, in the Val Maggia, the lowest passage from Crodo being over a ridge nearly 7,000 feet above that village. The surface of the Alp is everywhere steeply inclined to the east, and much of it is bare rock; but it contains valuable pastures and a certain extent of evergreen forest. There are no dwellings upon the Alp except a few rude huts, occupied by the herdsmen and dairymen from the 24th of June to the 8th, and sometimes 15th of September, the severity of the climate rendering the district uninhabitable during the rest of the year. From the Swiss village of Campo to the lower limit of the Alp may be reached by a path, barely practicable, in three or four hours. The products of pastoral industry can be transported over the crest of the mountain by men, and, to some extent, by mules; but the timber from the forest can be carried to market only by floating it down the torrent Rovano, which rises in the Alp, and thence by the river Maggia, to the lake. The communes of Crodo and Pontemaglio, in the Val Antigario—a local designation for a certain extent of the Val Tosa, called, also, Val d'Ossola—have long been in possession of the Alp, which they rent to their own citizens, on certain conditions, chiefly established by custom; and their title to the soil is admitted by Switzerland. But the commune of Campo claims
municipal, and the Swiss Republic, federal jurisdiction over the Alp, as appurtenant to Campo, and as geographically belonging to the Val Maggia, which Switzerland acquired in 1513, by conquest, confirmed by a treaty, negotiated in 1516, between the Republic and Francis I, King of France, then in possession of all the territory of the duchy of Milan.

To Italy, the district in dispute is of very little political or military importance, and the Italian government interests itself in the question rather for the sake of protecting the proprietory rights of its citizens than for any other motive. The Swiss government alleges that the recognition of its sovereignty over the Alp is important to the republic for police purposes, and especially for the purpose of extending her system of hydraulic and forestal administration over the territory, which is alleged to be almost indispensable to the protection of her soil on the lower course of the Rovano.

We traversed the Alp, inspected it, as far as possible in very bad weather, and returned to Milan by way of Val Maggia and Lago Maggiore, without having been forty-eight hours out of the kingdom of Italy. It was then agreed that the two arbitrators should examine the voluminous testimony, and the arguments in support of it, and notify me in case they were unable to agree. I left Milan immediately, and reached Florence on Saturday last, intending to proceed to Rome early in the present week, but I received a telegram yesterday informing me that no agreement between the arbitrators was possible, and requesting my presence again at Milan. I have ascertained that there is nothing requiring my presence at Rome—which is now almost deserted by all official persons—and I shall return to Milan to-morrow.

I have, &c.,

GEORGE P. MARSH.

No. 352.

Mr. Marsh to Mr. Fish.

No. 513.] LEGATION OF THE UNITED STATES, Rome, September 26, 1874. (Received October 24.)

SIR: Referring to my last dispatch, No. 512, dated September 15, 1874, I have the honor to report the further proceedings of the Italo-Swiss boundary arbitration.

I returned to Milan on the 16th of September, and immediately entered upon the duties of umpire under the convention agreed upon by the governments of the two countries interested.

The proofs and arguments of the agents of the parties, and the arguments of the disagreeing arbitrators, were laid before me in writing, and I devoted eight days to their examination and the preparation of a decision, which was pronounced, in Italian, in the course of Wednesday the 23d, and I returned to Florence the same evening. I shall go to Rome in a day or two, but as the minister of foreign affairs will not return to that city until after the middle of October, and as there is almost a complete suspension of business at the capital, I shall not remain constantly there until about that date. The royal family and court are not expected to return to Rome many days before the session of Parliament, which, it is understood, will be convoked on the 23d of November.

The indisposition of one of the arbitrators, and pressing engagements
on the part of the other, as well as of the agents of the respective governments, imposed upon me the necessity of limiting myself in the examination of the points before me to such as I conceived to have a substantial importance, and though I carefully read the whole discussion more than once, and consulted the principal documents referred to, I found it possible to confine my own argument to one or two questions which I conceived to embrace the real matter at issue. But, after all, my opinion covers sixteen closely-written large folio pages, and I could not even procure it to be copied, still less could I translate it, during the session of the board. When a copy is furnished me, I will transmit a translation to the Department. In the mean time, I submit the following statement of the facts, and of the principles by which I was guided in arriving at a decision.

As was observed in my No. 51, the title of the Italian communes of Crodo and Pontemaglio to the soil of the Alp of Cravairola was admitted by Switzerland, but in illustrating the nature of their title, it is proper to remark that those communes produced conveyances of undivided fractions of the territory, dated at various periods from A. D. 1367 to A. D. 1497, and that these conveyances were not from the commune of Campo or any of its citizens, but from inhabitants of the Val Antigario. How the grantors acquired title did not appear, and it was noticeable that in some of the conveyances the land was described as of the commune of Crodo in Val Antigario, and often as lying in Val Maggia. This evidence was accompanied with proof of the exercise of civil jurisdiction over the Alp by the authorities of Val Antigario, in one or two instances.

It is highly probable, judging from the general usage of the population of the Alps, that the people of Campo, which is said to have been occupied and inhabited for at least nine centuries, first partially cleared the forests of the Alp, and improved its territory; but of this there was no proof whatever, nor did it appear that the commune of Campo, or its people, had ever laid claim to the soil or sovereignty at any time before the middle of the sixteenth century, or thereabouts, if indeed even then. Switzerland conquered the Val d'Ossola and the Val Maggia in 1513, but the Val d'Ossola was given up in 1515. In 1516, by a treaty between Francis I, of France, (as Duke of Milan,) and Switzerland, the Val Maggia was recognized as belonging to the latter power.

It was contended by Switzerland that upon general principles of political geography, the water-shed is, in the absence of clear proof to the contrary, to be taken as the limit between conterminous states in mountainous countries, and further, that the designation of the valley of a considerable river includes the basins of all its tributaries, and, therefore, that as the Alp of Cravairola is a basin which discharges all its precipitations through the Rovano into the river Maggia, it must be held to be embraced within the territory of Val Maggia, secured to Switzerland by the treaty of 1516.

Considerations of political and economical convenience were appealed to with great force by Switzerland, and it was contended that certain proceedings before a Swiss magistrate, in 1554, involving a question of the eastern boundary of the Alp, were a recognition of the jurisdiction of Switzerland, by the commune of Crodo, which bound Italy. Numerous acts of attempted jurisdiction over the locus in quo by Swiss local authorities, after the year 1641, were alleged by Switzerland, which, however, were met by proof of similar acts of Italian officials about the same period, but there was no evidence whatever that Switzerland ever made any claim of sovereignty over the Alp before 1554, or indeed, ac-
cording to my interpretation of the evidence, before 1641. The conflict of jurisdictions from 1641 to the present day did not appear to me to have resulted in anything like the establishment of either, and I held that the rights of the parties must be determined by the status of the question in 1641.

I have no copies of any of the documents, or of the arguments of the parties, or, as I have said, even of my own decision; I must, therefore, for the present, limit myself to a very summary statement of my opinion and of the reasons for it.

As to the question of expediency, I was clearly of opinion that the ultimate best interests of both parties would be most effectually promoted by assigning the territory in dispute to Switzerland; but I could not construe the convention as contemplating that course on the ground of convenience alone, and as no provision was made for the transfer of the soil and compensation to the proprietors, I thought the extension of the sovereignty, institutions, laws, and administration of Switzerland over the Alp, while its proprietors and occupants remained citizens of a foreign country, would occasion continual jealousies and dissensions, and, therefore, prove prejudicial, rather than beneficial, to the peace, harmony, and good will of the two countries.

As to the water-shed, I held that, as a principle of demarkation of political jurisdiction, it had not been generally recognized in Europe, and, least of all, in the boundaries between the two parties in the present case, which present numerous deviations from it.

As to the geographical rule of embracing, by the designation of a principal valley, the basins of all the lateral affluents, I was of opinion that, in the construction of treaties, the interpretation was subject to control by the contemporaneous understanding of the parties, as evidenced by possession, claim, or non-claim, and other circumstances. I considered that the possession of the locus in quo, time out of mind, by Italian communes and their grantors, accompanied with claim of jurisdiction on their part, and absolute non-claim by Campo, so far as proof existed, was, at least, prima facie evidence that the exclusive possession of the soil by Italian municipal and quasi-political corporations was regarded as carrying the sovereignty with it, especially at a period when few lords and rulers could show any other title than possession to the lands they held; and that this evidence was applicable also to Switzerland, which, for nearly forty years certainly, and, as I thought, for a century and a quarter after she acquired the Val Maggia, never laid claim to jurisdiction over the Alp of Cravairola, and, therefore, probably never held it to be included within her limits.

I next considered the proceedings respecting the eastern boundary of the Alp of Cravairola—1534—which were adduced by Switzerland as evidence of the recognition of the jurisdiction of a Swiss magistrate over the Alp by the authorities of Crédo. From the vague record of these proceedings it appeared that quaedam differentia, is et quasio juridica had arisen, causa et occasione confini alpis Cravairola ipsurn de Crédo, et dominii ipsorum nominum de Campo eumque fuerit, etc., et quod litigando in jure coram Magnifico. D. Christophoro Quantoni de Friburgo, et Honore. Com. Vallis Madia, etc., but the nature of the action, the names of the parties, and the precise points at issue were not set forth. It was contended by Switzerland that an appearance by Crédo before the Swiss magistrates named in the record was an admission of the jurisdiction of the magistrates over the locus in quo. There was also an ingenious argument as to the force of the word dominium used in the body of the record, and in the attest-
tion of the notary who drew up and certified it. I was of opinion that the technical appearance of Crodo as a party was not sufficiently made out by the record; for the appearance, such as it was, might have been expressly for the purpose of excepting to this jurisdiction; and this suggestion was strengthened by the fact that there was no adjudication of the question, the communes having agreed upon a commission of citizens of Crodo itself to determine and mark the boundary, which was done accordingly. There was, however, as I shall show presently, a conclusive reason for giving quite a different construction and value to the proceedings in question from those ascribed to them by the agents of Switzerland. As to the word dominium, I held that Switzerland had mistaken both the grammatical category and the meaning of the word, and, of course, that it had not the force claimed for it. But the real point of the case lay, as I thought, in the subsequent action of the two governments in relation to these proceedings for fixing the boundary. In 1555, and of course the next year after the establishment of the boundary-marks, the royal government at Milan addressed a communication to the commissary or podesta of Domo d'Ossola, reciting that the ambassadors of Switzerland had complained that citizens of that province had violently entered into the Val Maggia and removed to a more easterly line the bounds which had formerly stood as limits "between one and the other jurisdiction," and that the ambassadors had demanded that the boundary-stones should be replaced in their original positions. In the course of the years 1555 and 1556 followed five or six other official documents, demanding or ordering the re-establishment of those limits; and it was noticeable that in not one of these documents, except the record of 1554, is any mention made of the Alp of Cravairola; but, on the contrary, the controversy is always spoken of as "inter Domodossolanos subditos nostros et homines Vallis Madix subditos Helvetiorum, de finibus," or as "controversia finium inter commune Crodi et commune de Campo, finis inter ipsa communia, et termini inter ipsa communia." The bounds were replaced; and nothing more is heard of the controversy; nor do the Swiss authorities appear to have advanced any claim of jurisdiction over the Alp until A.D. 1641. The termini referred to in those communications were certainly those set by the commissioners in 1554, and as, in all the official documents emanating from the governments of Milan and the local authorities of the province of Val d'Ossola, these termini are treated as the boundaries, not of an outlying pasture occupied by Crodo on Swiss territory, but as of the respective "jurisdictions," and of the "communes," it was my opinion that the two supreme governments of Milan and Switzerland considered the boundary-stones of 1554 as marking the limits of the territorial sovereignty of their respective states. The acquiescence of both parties, in actual practice, in this demarcation for a period of more than four-score years, I thought strongly confirmed this view of the case.

In 1641, the Swiss governor of Val Maggia advanced a claim of jurisdiction over the Alp in a very formal manner, and this was repeated in the year following, but always resisted by the Italian government of Domo d'Ossola. At length, in 1650, a congress was held at the Borromean Islands for the determination of the question. But no solution was arrived at, except an agreement that the people of Crodo should have the right of floating the timber cut by them down the Rovano into the Val Maggia and the lake, and that the people of Campo might occupy a part of the Alp as a pasturage, after it had been abandoned by the people of Crodo in the autumn, and it was expressly stated that this was granted "as a favor to the Swiss commissioners at the con
gress." The provisions of the agreement were to remain in force until
the question of jurisdiction should be finally decided, which, it is need-
less to say, has never been done.

The subsequent history of the question is made up of a succession of
private trespasses and official attempts at the exercise of local juris-
diction by both parties, but I do not find anything in them to affect the
rights of either of the respective governments, and these rights, in my
apprehension, remain what they were three hundred years ago.

The Comprosius Arbitral, as it is styled in the convention, is drawn
up in French, and it states the question to be decided in these terms:
"La limite frontière [entre les deux pays] doit elle, comme l'estime la
suisse meire le fait de la claime principale [des montagnes] en passant
par la corona di grosso Pizzo dei Croselli, Pizzo Pido, Pizzo del Forno,
et Pizzo del Monastero; en bien doit-elle, comme l'estime l'Italia quilteras-
tero la chaîne principale au sommet désigné Sonnenhorn, A2788m., pour
descendre vers le ruisseau de la vallée li Campo, et, en suivant l'arête
secondaire nommé Creta Tremolina (ou Mosso del Lodano, 2356m., sur
la Easte Suisse) rejoindre la claime principale au Pizzo del Lago Selato?"

My decision, omitting the formal part, was simply an affirmation of
the second proposition in the above paragraph in the words of the con-
vention.

I greatly regret that I could not, in drawing up my opinion, and can-
not now, give the argument a fuller development, but I hope I have
said enough to justify the conclusions at which I have arrived.

In order to save possible embarrassment, I informed Senator Guic-
chiardi, president of the board, that I could accept from the respective gov-
ernments no compensation, gift, or other material acknowledgment,
and begged that none might be offered by way of recognition of the
duty I had performed.

I have, &c.,

GEORGE P. MARSH.

No. 353.

Mr. Marsh to Mr. Fish.

No. 515.] LEGATION OF THE UNITED STATES,
Rome, September 27, 1874. (Received Oct. 14.)

SIR: I have the honor to acknowledge the receipt of your instruction
No. 440,* dated September 2, 1874, and of the accompanying inclosures
relating to co-operative action between the minister of the United States
and those of the western powers in Japan, and to participation by Ameri-
can citizens in the expedition to Formosa, and in other foreign wars,
and have perused the correspondence between the Department of State
and American ministers abroad on those subjects.

I do not think that Italy is disposed to encourage separate action, on
the part of her minister in Japan, on any matter in which the Christian
powers have common interest. The force of the motive which led to
such action by the minister of Italy in that country, on a former occa-
sion, is much diminished by the success of the methods of Pasteur and
others in combating the disease of the silk-worm in Italy. The impor-
tation of the seed, as it is called, of this insect into Italy, was consider-

* Identical with instruction No. 703 to the legation in Germany; Foreign Relations, 1874, page 460.
ably reduced last season, and some Italian silk-growers believe that the persevering employment of these methods will entirely extirpate this malady in Europe, and restore the silk-industry to its former prosperity.

I have, &c.,

GEORGE P. MARSH.

No. 354.

Mr. Marsh to Mr. Fish.

No. 522.] LEGATION OF THE UNITED STATES,
Rome, October 12, 1874. (Received Nov. 4.)

SIR: Referring to the personal instructions to the diplomatic agents of the United States, under date of the 15th of August, 1874, section 48, I beg leave to submit some observations respecting the laws of Italy on the subject of the marriage of foreigners in that country, and respecting the practice of citizens of the United States marrying in Italy since the passage of the act of Congress of June 22, 1860, the 31st section of which makes certain provisions in regard to the marriage of American citizens abroad.

The requirements of the Italian Codice Civile, in regard to marriages between Italian citizens, can seldom be complied with by citizens of the United States, or other foreigners in Italy, and I remember no instance in which any attempt has been made to conform to them by foreigners, except where one of the parties was an Italian citizen.

In order not to burden this long dispatch with unnecessary manuscript matter, I simply refer to the Codice Civile, which is, no doubt, in the library of the State Department, title V, chap. I, section second, §§ 55, 57, 60, 62, 63, 64, 65; chap. II, §§ 70, 74, 79, 80, 81; chap. III, entire; chap. V, §§ 102, 103.

Paragraphs 102 and 103 are, I believe, the only provisions of the Italian code which relate especially to the marriage of foreigners in Italy, except that by § 9, of title I, it is declared that "a foreign woman marrying an Italian citizen, acquires citizenship and retains it even as a widow."

It will be observed that §§ 102 refers merely to the capacity of the parties to contract matrimony, and not to the mode of celebration; and that §§ 103 evidently contemplates the performance of marriage before the civil authorities of Italy, in conformity with the general provisions of the code; but it is proper to observe here, that, though I have never taken the formal opinion of counsel on the subject, in writing, I have been more than once assured by eminent Italian lawyers that any marriage between foreigners in Italy, which would be valid by the laws of their own country, would be recognized as such by the tribunals of Italy.

I think it proper to draw the attention of the Department to the provision in §§ 103 respecting the "declaration of the competent authority" in regard to the absence of impediments to the marriage. What would be regarded as "the competent authority" does not appear from the code. I was once called upon to make such a declaration, in a case where I happened to have personal knowledge of the history of the party. I gave the declaration, but at the same time I informed the party and the civil officer who asked it that I could not vouch for the authority of the legation to issue such a certificate as an official act. It has
very lately, for the first time, come to my knowledge that consuls of the United States in Italy, if not elsewhere, sometimes give, under their official seals, certificates of this sort which are accepted by the civil authorities as a sufficient compliance with the provision in question.

When the parties to marriages in Italy are both citizens of the United States—a case of by no means frequent occurrence—they are generally married by some American clergyman who happens to be officiating in a church or congregation in Italy. The consul is requested to attend the ceremony, and his presence in his official capacity, duly certified by him, has been supposed to be a sufficient legal sanction to the marriage. I do not know that it is a point of any importance, but it may not be amiss to say that, so far as I know, no American church or congregation in Italy, except that of the Rev. Mr. Nevin, at Rome, has any corporate or other legally recognizable existence, according to the laws of this country.

Marriages of American citizens with foreigners in Italy are almost uniformly between American women and Italians, and sometimes French and German men, and I remember but two cases of marriage between male citizens of the United States and foreign women in Italy during my residence in this kingdom.

In the case of marriages of mixed nationality, I have always been careful to warn the parties, when I have had opportunity to do so, that possibly a marriage which would be recognized as legal by the courts of one country, in cases affecting the rights and liabilities of the party citizen of that country, would not be deemed valid by the tribunals of the other country; and I have never failed to add that I could venture no opinion on questions of this sort, and to advise the parties to take legal counsel on the subject. I have also thought it my duty to inform American women, about to contract marriage with Italian citizens, that, by Italian law, the act of marriage deprives such women of their American nationality, and invests them with that of the husband, and hence that they should inform themselves how far their rights of inheriting, holding, and conveying or transmitting real estate in the United States might be affected by their marriage abroad.

With regard to marriages between citizens of the United States in foreign countries, I have always supposed the statute of June 22, 1860, to be an enabling act, and that its purpose was to invest the consul "before" whom such a marriage is celebrated with higher functions than those of a witness as a mere certifying officer. I have construed the statute as designed to facilitate marriages between American citizens abroad, by clothing an officer of the United States with power, if not technically to solemnize them, by pronouncing a form of espousal, still to give them a valid sanction by his official presence; and the law seems to me nugatory on any other supposition. So far as the proof of the fact of marriage is concerned, the testimony of any other witness would be as good as that of the consul, and I do not know any principle upon which Congress can be supposed to have intended to give special value to the certificate of a consul to a purely private and unofficial act of third persons, in which, as seems to be supposed by the instructions, he figures in no other character than that of a simple spectator. In the case of marriages before magistrates or clergymen, authorized by law to perform the ceremony, at least in the United States, the certificate is issued, not by a bystander, official or private, but by the functionary whom the law empowers to give a legally binding sanction to the act. The certificate prescribed by the consular regulations (p. 324, Form No. 80) seems to assume that the consul is a witness and nothing more, for it
requires him to certify, not an act in which he participates, but the celebration by some other person, whom he adjudicates to be “authorized by the laws of to perform such ceremony.” Whether the blank is to be filled with the name of the country where the marriage is solemnized, or with that of the American State of which the parties are citizens, does not in the least appear. And though the consul is treated as having no functions with regard to the marriage itself, he is empowered to pronounce, afterward, a legal decision on the question, what lay or ecclesiastical officer is authorized by foreign or by State law [as the case may be] to celebrate marriage in a foreign country. Now, on these points the statute is absolutely silent. It says nothing whatever in regard to the form of solemnization, or to the character of the functionary by whom it is to be performed, nor does it require or authorize the consular officer to certify anything beyond the simple fact of the marriage; still less does it empower him to adjudicate on what may be, and in fact, according to some opinions, at this moment is, in Italy, a difficult question of law.

In Section XLVIII of the new instructions, the Department expresses doubts whether marriage can be legally celebrated at all between citizens of the United States in a foreign country, unless it be solemnized in conformity with the laws of such country. It does not appear whether the Department questions the power of any government to legislate respecting marriage between its citizens within a foreign territorial jurisdiction; whether it questions the power of the Federal Government, as a government of limited attributions, to legislate on the subject of marriage at all, except as respects the citizens of the District of Columbia; or whether, as a matter of legal construction of the statute, it questions the intention of Congress to provide a mode of celebrating marriages between American citizens abroad.

With regard to the first point, it may be observed that such doubts are not entertained by the governments of Europe. The British statute (George IV, chap. 91) declares marriages between British subjects solemnized abroad by clergymen of the Church of England to be valid; the statute 12 and 13, Victoria, chap. 68, provides that British consuls in foreign countries may “solemnize or allow to be solemnized” such marriages at their consulates; and I am informed that in 1853 Lord Clarendon decided that marriages between British subjects, under those acts, could be celebrated, in foreign countries, nowhere but at British consulates, and that the actual presence of the consul was necessary to the validity of the marriage. Marriages between British subjects, however, continue to be solemnized occasionally at the legations, under the principal of extritoriality. The British statutes prescribe no observance of any of the requirements of the local law of the place of marriage, and in fact such observance would be impossible when the ceremony is solemnized either at the legation or at a consulate. The number of British citizens domiciled in this country is vastly greater than of American, and marriages between them are frequent. In practice, they content themselves with complying with the provisions of their own statute, and observe no formality whatever ordained by the laws of Italy.

France and Germany have analogous laws, and though I am unable to quote them specifically, I am informed that they require no conformity to any provision of the Italian code in case of the marriage of their citizens in Italy.

As to the jurisdiction of Congress over the subject, it would be a singular anomaly if the Federal Government, the only government in the Union legally recognized by foreign states and officially known to them,
cannot provide a mode of legalizing all contracts between its citizens while temporarily without the limits of its territorial jurisdiction. Nor does this appear to be the view generally entertained by the Federal Government in regard to its own powers. Not to speak of the authority conferred on consuls in this respect by Congress, § XLIII of the personal instructions of August 15, 1874, empowers secretaries of legation to administer oaths, take depositions, and to perform any notarial act which a notary public is authorized by law to do or to perform, and such acts he is required to attest under the special seal of his secretarship. No act of Congress is referred to in this paragraph, and if any exists on this subject it has escaped me; but, in either case, it is not easy to see how the Government of the United States can by law or departmental regulation authorize secretaries of legation or consuls to perform in foreign countries acts necessary to give legal force to contracts as solemn and as weighty in the eye of the law as the celebration of a marriage, unless, it has the power to make regulations on the latter subject also. The performance of notarial acts is a duty everywhere discharged by local officers, but the power of the United States to confer upon its diplomatic and consular officers notarial authority, in respect to acts of American citizens in foreign countries, does not appear to be doubted. Unless, then, marriage is a contract more completely sui generis than it is now considered to be in countries where English jurisprudence is the basis of legislation, I am unable to perceive why the Federal Government has not as large powers respecting it as respecting any other contracts between its citizens abroad not relating to real estate.

It appears to me that there is room for serious doubt whether the laws of the several States of the Union have any legal force in relation to the marriage of their citizens when out of the jurisdiction of those States, and, consequently, whether Congress is not the only body which can legislate on the subject. I do not forget that acknowledgments of deeds of lands in the States, executed abroad, taken and certified by consuls, are generally considered as owing their validity not to the position of the consul as a Federal officer, but to the laws of the State, which authorize him to receive and certify such acknowledgments. But in this case the land, the subject-matter, remains always within the territorial jurisdiction of the State, while in the case of a marriage or other personal contract entered into in a foreign country, by persons not at the time amenable to the laws of the State or within reach of process from its tribunals, it is not clear that the laws of the State have any greater applicability than to offenses committed by such persons on foreign soil.

Whatever doubts may be entertained as to the power of Congress to legislate on this subject at all, except in regard to citizens of the District of Columbia, I cannot find in the language of the statute of June 22, 1860, any room for question as to the intention of the national legislature. The construction which I find myself obliged to give to the law is, that it regards the form and minister of the ceremonial part of the celebration as altogether indifferent, as mere matters of taste and feeling with the parties, and makes the legal and effectual solemnization to consist exclusively in the mutual assent of the parties, solemnly pronounced by them in the presence of the consul in his official capacity, as a special functionary ad hoc, precisely as in the case of a marriage before a justice of the peace or other civil magistrate in many of the United States. The consul appears to me to be acting in this case as a notary acts in receiving and certifying an acknowledgment of a deed of law; while the construction given to the statute by form No. 80, treats him as merely a witness to the act, though attesting it by a separate instru-
ment instead of subscribing the contract in that capacity. If it were the purpose of Congress to make valid a marriage which, perhaps, without its provisions would not be so, I do not know what stronger language it could have used than that actually employed in the statute in question; and, unless it is interpreted as conferring upon the consul the same authority as that which British legislation in the like case and in like terms confers on British consuls, and which the laws of the several American States confer on magistrates and clergymen, I do not perceive that it serves any purpose whatever. For if the presence of the consul does not give validity to the act of the parties in taking each other as man and wife, *per verba de presenti*, without the recitation of a matrimonial formula, not alluded to in the statute by a clergymen or magistrate, then his presence has no legal effect at all, inasmuch as it can hardly be contended that a consular opinion on the legal powers of a foreign magistrate, certified in pursuance of a simple administrative regulation of a Department, but neither required nor authorized by the statute, can make legal an act which would be void without such certificate, or that the judgment of a consul would be any evidence at all in case of a doubt as to the authority of the officiating magistrate.

At the same time the consideration of possible questions of conflicting jurisdiction has led me to advise the parties, in the few cases of marriage between American citizens in Italy, where I have been consulted, to conform as far as possible to the laws of the State to which they belong, but always to secure the presence of a consular officer at the ceremony.

In conclusion, I beg pardon for the freedom with which I have discussed this important question. I have gone into it at length, not with the purpose of asking a reconsideration of any of the questions which my official superiors have decided, or even a reply to the arguments which have had weight with myself, but simply as an explanation of the grounds on which I have thought that a marriage in Italy between citizens of the United States, competent to contract matrimony, celebrated by any ceremony whatever, or without any ceremony, but the formally expressed assent of the parties before or in the presence of a consular officer of the United States, is "valid to all intents and purposes."

At all events, I shall hereafter strictly conform to the instructions whenever I have occasion to give any advice on the subject.

I have, &c.,

GEORGE P. MARSH.

No. 355.

*Mr. Marsh to Mr. Fish.*

No. 525.]

**LEGATION OF THE UNITED STATES,**

*Rome, November 25, 1874.* (Received December 19.)

*SIR:* The new parliament of this kingdom, the deputies to which were chosen at the elections November 8, 15, assembled at Rome, pursuant to royal decree, on the 23d of the present month, and was opened by His Majesty in person with the reading of a speech, a copy and translation of which are hereto annexed.

The canvass and election were conducted with more than ordinary spirit, and the polls were attended by a larger proportion of the legal voters than is usual.

About one hundred and thirty of the deputies, or one-fourth of the chamber, are new to parliamentary life, and though the returns showed a considerable nominal administration majority, the election of the min-
isterial candidate for the presidency of the chamber of deputies was not thought altogether secure. But the question has been settled to day; by the choice of Mr. Bianchieri, the president of the late chamber and a supporter of the ministry, by a majority of sixty-four votes. Many deputies who, it is said, would have voted with the opposition were absent, but the probability is that the present ministry will be sustained by the chamber.

The most noticeable feature of the election is the increase of the opposition element in the southern provinces, which is thought an unfavorable circumstance, as indicating an aggravation of local jealousies between the Neapolitan and Piedmontese sections of the kingdom.

The election of Garibaldi is an individual, not a party triumph, and is an evidence of his great personal popularity, not an indorsement of his political opinions. Garibaldi is indeed republican in sentiment, but he is not a type or exponent of any political organization or creed, nor in Parliament, would he be likely to regulate his action by any consideration of party expediency. He was urged to attend the opening of the session with the view, it was thought by some, of making him the center, if not the leader of a parliamentary opposition, but he did not appear at Rome, and will not probably be a frequent attendant at the sessions of the chamber.

The questions raised by Mr. Minghetti's address to his constituents, and touched upon in His Majesty's speech, are, so far as now appear, the only ones of much moment which will be presented during the session. The opposition party is not united upon any definite programme, and I do not think that the general ministerial policy is unacceptable to the nation upon any other ground than its avowal of the necessity of continuing the taxes already so burdensome.

I have, &c.,

GEORGE P. MARSH.

[Insertion in No. 535.—Translation.]

Speech of His Majesty King Victor Emmanuel at the opening of the Italian Parliament, November 23, 1874.

SENATORS, DEPUTIES:

My first thought on finding myself in the midst of the representatives of the nation is to offer words of gratitude to the Italian people for their cordial demonstrations of affection on the occasion of the 25th anniversary of my reign.

Those demonstrations were all the more acceptable to my heart because they were spontaneous and universal.

Equal to the affection of which the country has given me proof will be, I trust, the zeal of the new legislature in the accomplishment of the work for the re-organization of the state.

The civil code has been unified; the penal code should also be. It has been the subject of mature study in the senate, and it will be again brought to your attention. I hope that from your discussions a code will be perfected worthy of science and of the Italian name.

The reform of commercial rights, required by the country and promised by the government, will be initiated by a bill on commercial associations. The interference of the government will be less, and the responsibility of the administrators will be thus rendered more efficacious.

The government will submit to you certain measures for the re-establishment of public security in those provinces where it has been seriously disturbed. In accepting these measures you will follow the example set by the most enlightened nations and by those legislatures most jealous of preserving public liberty, which falls into contempt unless it guarantees the security of persons and of property.

The new military organization has given good results, and I am proud to remark the progress of the army to which I am attached by the deepest affection and by the most cherished associations of my life. This work must be carried to the end, and provision must be made for the defense of the state.
The navy, upon which so much of our future depends, will be, also, the subject of your deliberations.

My government will present to you bills for the reformation of certain taxes, with the object of a more equitable distribution and of rendering them more simple and productive.

This will be the commencement of a gradual reform of our tributary and administrative system, which, created in moments of difficulty and agitation, has need of careful revision.

Meanwhile we must incur no new expenses. Parliament will, therefore, have to occupy itself with those alone for which engagements have been made, or with those of evident urgency. But my government, in proposing them, will point out to you new measures to meet them.

In this manner you will succeed in establishing an equilibrium in the budget of the kingdom. This is the most ardent desire of the nation. This will be the fullest compensation for, and the most efficacious relief to, the sacrifices which the people have borne with such noble courage.

The regeneration of Italy will thus be cleansed of every stain. Italy will thus have the rare merit, in the history of political transformations, of never having entertained even the idea of betraying her public faith.

Senators, deputies: I am happy to assure you that we continue to be upon the best relations with foreign powers. I receive with pleasure continued proofs of the esteem in which friendship with Italy is held by other nations.

This is the reward for the moderation and firmness of our policy. Persevering in this course, we shall continue to show how liberty united with order may solve the most difficult problems, and Italy will not fail in her glorious destiny.

Providence has assisted us at every step, and this year has given to the country abundant harvest, thereby relieving the poorer classes, whose happiness never ceases to occupy my thoughts.

Let us thank God, and with the constant virtue of our thoughts and deeds let us continue to merit his protection and help.

No. 356.

Mr. Fish to Mr. Marsh.

DEPARTMENT OF STATE,
Washington, January 19, 1875.

SIR: Your dispatch No. 522 of the 12th of October last, relative to the marriage of citizens of the United States in Italy, has been received. It is replete with luminous remarks, but the Department cannot concur in all its conclusions. The subject has been deliberately considered here prior to the framing of the new personal instructions. It has since, on several occasions, engaged attention, especially with reference to a dispatch from the legation at Paris, a copy of the instruction to Mr. Washburne, in answer to which, is inclosed for your information.

You remark that you had only recently become aware that consuls of the United States in Italy had been in the habit of issuing certificates to meet the requirements of § 103 of the Italian civil code, which requires a declaration from competent authority that there are no impediments to a proposed marriage. It is probable, however, that the practice of issuing such certificates has long prevailed, and the Department sees no objection to them if due inquiry be made as to the facts before they are issued.

The purpose of Congress in requiring the presence of a consul at a marriage may have been to secure the testimony of an official witness of our own to the act, a witness, too, who would be bound to record the transaction in the archives of his consulate and attest it under his official seal.

Though unofficial witnesses might be held competent to testify, their testimony might not be held available when required. The parties to

*See under France, Mr. Fish to Mr. Washburne, No. 660.
the marriage, however, could always produce the consul's certificate when occasion might call therefor.

You are believed to be mistaken in saying that the 48th section of the new instructions of the Department expresses doubt as to whether marriage can be legally celebrated at all between citizens of the United States in a foreign country, unless it be solemnized in conformity with the laws of such country. Your mistake upon this point will, it is believed, be clear to you upon a further examination of the paragraph referred to. The Department has been careful not to express an opinion as to the validity of any marriage under particular circumstances. Its object has been merely to warn, so as to lessen, as far as might be practicable, the peril of contracting a marriage which in any case might be declared to be invalid. It is not the province of an executive department to decide the question.

The provisions of our act of 1860 upon the subject of marriages abroad are not supposed to have been influenced by the legislation of any other country. They are understood to have been in the main designed to correct a practice which prevailed at some points of marriages by consuls without reference to the local law.

Marriage at legations without regard to the law of the country, on the ground of extritoriality, as it is called, is at best a questionable proceeding, which it may be apprehended would scarcely be sanctioned by the courts of the nation where they were solemnized. The tendency of opinion is believed to be towards narrowing the immunities of diplomatic officers and their places of abode to those limits only which may be indispensable to enable them to discharge their official duties without molestation or restraint.

The use of the legation for the marriage of persons, even of the nationality of the country to which it belongs, cannot be said to be necessary or even convenient for diplomatic purposes.

The competency of this Government to provide generally for the marriage of citizens of the United States abroad has not been called in question, nor has any opinion upon that point been expressed.

You seem to have overlooked § 24 of the act of Congress of the 18th of August, 1856, which confers upon secretaries of legation authority to act as notaries in certain cases.

When the consequences of marriage in respect to property in possession, or which may be acquired by gift, purchase, or inheritance to the offspring of the parties, or to the peace of mind or good name of the latter, are duly considered, the weight of the responsibility which an officer of this Government abroad may incur by in any way countenancing a rash contract of that kind may become apparent.

I am, &c., &c.,

HAMILTON FISH.

No. 357.

Mr. Marsh to Mr. Fish.

No. 357.]

LEGATION OF THE UNITED STATES,

Rome, February 18, 1875. (Received March 13.)

SIR: The visit of General Garribaldi to the capital to take his seat as a member of the chamber of deputies has, under the peculiar circumstances of the case, assumed an importance which gives it the magnitude of a political event deserving of notice in my correspondence with the Department of State.
General Garribaldi, though an ardent advocate of liberal principles of government, is not the leader or representative of any political party in Italy, but he is known to be warmly opposed to many features of the policy of the present ministry, and the severe terms in which he had recently spoken of the cabinet led many to apprehend that on taking his seat as a deputy he would, by qualifying his oath of office, or some other irregularity, embarrass the proceedings of the chamber, and perhaps excite disturbance among the thousands who flocked to witness his entrance into the hall of the national parliament. I do not think General Garribaldi had in the least countenanced this expectation. He has never through life encouraged any appeal to popular passion, or any resistance to governments, except by legal measures, or in the way of organized and orderly attempts at revolution, and, from the moment of his arrival at Rome, he exerted himself to the utmost to restrain every manifestation of excitement and to maintain public tranquility unbroken. But he had given no explicit assurance as to his intended course of action, and his appearance in parliament was looked forward to with no little anxiety in all quarters. His frank and full-toned giuro, in response to the oath, as pronounced to him by the proper officer, was received with loud applause by all persons, of whatever rank or party, present at the scene, and was felt as a great relief, not only by the ministerial party, but by many even of his most judicious friends, who feared that passion might betray him into some unguarded step prejudicial both to his own renown and to the best interests of his country.

He has since had satisfactory interviews with the King, with several of the ministry, and with many others of the most eminent persons in the nation, and he avows the intention of devoting his powers to plans of material improvement specially affecting the capital, instead of occupying himself with politics, and I suppose he will rarely, if at all, return to vote in the chamber of deputies.

His plans are not, so far as I know, altogether matured, but they embrace the securing of the city from inundation by canalizing or diverting the course of the Tiber, the construction of an artificial port near Pinuccino, in which the concurrence of the great capitalist and munificent patron of public improvement, Prince Alexander Torlonia, is hoped for, and measures for restoring the healthfulness of the Agro Romano, and rendering it once more habitable by man.

How far these great schemes will be countenanced by the government I cannot say, but I have no doubt they will receive the candid consideration of the ministry, and be sustained, so far as when elaborated, they shall seem expedient in themselves and feasible without involving an expenditure beyond the resources of the state.

Public opinion, I think, demands such a recognition of the patriotic course of General Garribaldi, and if his views and those of the ministry on these questions of immediate material interest can be reconciled, his influence will prove a potent support to the Italian government.

I do not, indeed, suppose that the general relations of parliamentary opposition and the ministry will be much affected by Garribaldi's new position; but practical measures in which he and the government concur will scarcely fail to receive the support of all parties. The influence of Garribaldi in Italy, and, I may say, in Europe, detached as he is from mere party ties, is moral rather than political, and it will, I believe, be of immense value in the maintenance of social order and the discouragement of illegal combination and factious cabal.

I have, &c.,

GEORGE P. MARSH.
FOREIGN RELATIONS.

No. 358.

Mr. Marsh to Mr. Fish.

No. 538.]

LEGATION OF THE UNITED STATES,
Rome, March 19, 1875. (Received April 12.)

SIR: Since the receipt of your instruction No. 458, dated January 19, 1875, no American citizens residing in Italy have, to my knowledge, proposed to contract marriages with each other. There have, however, been some cases within the year in which an American citizen residing in Italy has married a foreign husband or wife, but the legation has not been asked to sanction the marriage or in any way participate in the ceremony.

I have heard of one or two cases where an Italian citizen and an American citizen residing in Italy, not finding it convenient to comply with the requirements of Italian law, have repaired to Switzerland, where it is said that the forms are simpler, been married there, and returned to Italy to reside. I do not know that the validity of such marriages has been questioned, but I should certainly not have advised recourse to that method of celebrating a marriage.

The instruction is so full and clear that cases are not likely to arise which will occasion embarrassment to the legations; but I have been asked how the blanks in the consular certificate are to be filled. In the case of a marriage celebrated before an American consul by a foreign Protestant clergyman, the consul, I think, would hardly be justified in certifying that the marriage was solemnized by the Rev. A. B., a clergyman authorized by the laws of Italy to perform such ceremony, because there is no express provision on the point in the Italian code, though I am assured that such a marriage between American citizens would be held legal here. A certificate of marriage between an American citizen and an Italian woman in which the consul had stated that the ceremony was performed by A. B., a (foreign) Protestant clergyman, authorized by the laws of Italy to perform the ceremony, was brought to me for what is called here legalization; but I greatly doubted the validity of the marriage, and refused the attestation.

In case the question should arise in a marriage between American citizens, I should, unless otherwise instructed, incline to advise that the blank be filled with “laws of the United States,” rather than “laws of Italy,” or, if not disapproved by the Department, that the words “authorized by the laws of to perform the ceremony” be omitted altogether.

I have, &c.,

GEORGE P. MARSH.

No. 359.

Mr. Cadwalader to Mr. Marsh.

No. 472.]

DEPARTMENT OF STATE,
Washington, April 13, 1875.

SIR: Your dispatch No. 538, of the 19th ultimo, has been received. It states, in its closing paragraph, that in a case of marriage between American citizens in Italy, you might advise that a blank in the con-
sular certificate should be filled with the words "laws of the United States." This, however, would, it is apprehended, not be a judicious course, and it might prove to be judicially untenable. The only law of the United States on the subject of marriage is that which provides that all marriages celebrated in the presence of a consular officer in a foreign country between persons who would be authorized to marry if residing in the District of Columbia are valid to all intents and purposes as if said marriage had been solemnized in the United States. The phrase "laws of the United States" might therefore be deemed to imply laws of the several States. Now, as the laws of the several States on the subject of marriage are various, if the certificate were to say that the marriage was performed according to the "laws of the United States," it might be held to be vague and inaccurate.

The United States statute on the subject of marriages above referred to (Revised Statutes, section 4082) defines those who may be married under its provisions, namely, "persons who would be authorized to marry if residing in the District of Columbia," but is silent as to the persons who may perform the ceremony. When, however, it speaks of "marriage in a foreign country," it is but reasonable to hold that to be a marriage, it must be solemnized (in the absence of authority given by the laws of the United States to any other person) by some person authorized, by the law of the country where the marriage takes place, to perform that ceremony, or in some mode recognized by such law.

In this view it is believed that the blank indicated by you in form of certificate No. 87, in Consular Regulations of September 1, 1874, should be filled with the name of the country in which the marriage takes place, and not refer to the authority of the party performing the ceremony, as derived from the laws of the United States, which do not give authority to any person to solemnize marriages. It is not supposed that actual statutory enactments are essential to give the authority, but such authority as would seem to exist in Italy for the performance of the marriage ceremony by a Protestant priest, as is inferred from the statement in your dispatch, that "while there is no express provision on the point in the Italian code," you are assured that such a marriage "between Americans would be held legal" in Italy.

Possibly it would be well to use the word "law," which will cover unwritten as well as statute law, instead of the word "laws."

I am, &c., &c.,

JOHN L. CADWALADER,
Acting Secretary.

JAPAN.

No. 360.

Mr. Bingham to Mr. Fish.

No. 124.] UNITED STATES LEGATION, JAPAN,
Tokei, September 26, 1874. (Received October 29.)

SIR: On the 12th ultimo, Mr. Hawes, our consul at Hakodate, by a dispatch of that date, notified me that Mr. L. Haber, late acting German consul at that port, had been murdered on the previous evening by a Japanese. The murderer was arrested, tried, convicted, and on the 10th