

PORTUGAL—CLAIMS.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A report in reference to claims of citizens of the United States on the government of Portugal.

FEBRUARY 4, 1852.

Referred to the Committee on Foreign Affairs, and ordered to be printed.

To the House of Representatives :

In answer to the resolution of the House of Representatives of the 7th of August, 1850, and the 17th of December, 1851, requesting information touching the claims of citizens of the United States on the government of Portugal, I transmit a report from the Secretary of State and the documents which accompanied the same.

MILLARD FILLMORE.

WASHINGTON, January 28, 1852.

To the President of the United States :

The Secretary of State, to whom has been referred two resolutions of the House of Representatives, the first dated on the 7th of August, 1850, requesting the President "to communicate to this House (if not incompatible with the public interest,) the amount of the several claims of the United States against Portugal; the nature of those claims; the correspondence upon the subject, both at Washington and Lisbon, between the two governments; also, the amount and nature of the claims preferred by Portugal against the United States, and all the correspondence between the two governments"—and the second on the 17th of December, 1851, requesting the President "to communicate to this House the correspondence upon which the claims of citizens of the United States against Portugal have been adjusted, if not inconsistent with the public interest," has the honor to lay before the President the papers mentioned in the accompanying list, which are believed to contain all the information called for by the resolutions.

Respectfully submitted,

DAN'L WEBSTER.

DEPARTMENT OF STATE,
WASHINGTON, January 27, 1852.

LIST OF ACCOMPANYING PAPERS.

FIRST SERIES.

Papers relating to the claim of the owners, &c., of the "General Armstrong," and correspondence on the claims of American citizens against Portugal in general.

- A. Captain Reid's protest, September 27, 1814.
- B. Translation of a despatch from the Governor of the Azores islands, September 28, 1814.
- C. Portuguese Minister of Foreign Affairs to English Minister at Rio Janeiro, December 22, 1814.
- D. John Quincy Adams to the Chevalier Correa de Serra, March 14, 1818.
- E. Mr. Kavenagh to the Minister of Foreign Affairs of Portugal, February 17, 1837.
- F. José J. G. de Castro to General Washington Barrow, August 3, 1843.
- G. Secretary of State to Mr. G. W. Hopkins, April 20, 1849.
- H. Mr. Hopkins to the Count Tojal, June 28, 1849.
- I. Count Tojal to Mr. Hopkins, September 29, 1849.
- K. J. B. Clay to Count Tojal, November 2, 1849.
- L. Count Tojal to Mr. J. B. Clay, March 9, 1850.
- M. Mr. Clay to Count Tojal, March 15, 1850.
- N. Count Tojal to Mr. Clay, April 15, 1850.
- O. Mr. Clay to Count Tojal, April 24, 1850.
- P. Count Tojal to Mr. Clay, May 15, 1850.
- Q. Mr. Clay to Count Tojal, May 16, 1850.
- R. Count Tojal to Mr. Clay, June 20, 1850.
- S. Mr. Clay to Count Tojal, June 20, 1850.
- T. Secretary of State to Mr. Clay, March 2, 1850.
- U. The same to the same, March 8, 1850.
- V. Mr. Clay to Count Tojal, June 21, 1850.
- W. Count Tojal to Mr. Clay, July 2, 1850.
- X. Mr. Clay to Count Tojal, July 2, 1850.
- Y. Count Tojal to Mr. Clay, July 6, 1850.
- Z. Mr. Clay to Count Tojal, July 7, 1850.
- A A. Count Tojal to Mr. Clay, July 10, 1850.
- B B. Mr. Clay to Count Tojal, July 11, 1850.
- C C. Count Tojal to Mr. Clay, July 13, 1850.
- D D. Mr. Webster to J. B. Clay, August 23, 1850.

- EE. Mr. Webster to C. B. Haddock, January 7, 1851.
- FF. The same to the same, February 24, 1851.
- GG. The same to the same, March 19, 1851.
- HH. The same to the same, March 20, 1851.
- II. C. B. Haddock to Secretary of State, June 28, 1851.
- KK. Secretary of State to Mr. Haddock, July 12, 1851.
- LL. C. B. Haddock to Secretary of State, July 17, 1851.
- MM. Acting Secretary of State to Wm. C. Rives, September 17, 1851.
- NN. Mr. Rives to Secretary of State, October 16, 1851.
- OO. The same to the same, November 5, 1851.
- PP. M. de Figanière é Morão to Secretary of State, November 9, 1849
(with enclosure.)
- QQ. The same to the same, March 12, 1850.
- RR. The same to the same, March 25, 1850.
- SS. The same to the same, April 27, 1850.
- TT. Secretary of State to M. de Figanière é Morão, April 30, 1850.
- UU. M. de Figanière é Morão to Secretary of State, May 20, 1850.
- VV. Secretary of State to M. de Figanière é Morão, May 24, 1850.
- WW. M. de Figanière é Morão to Secretary of State, June 25, 1850.
- XX. The same to the same, July 2, 1850.
- YY. The same to the same, August 6, 1850.
- ZZ. The same to the same, August 9, 1850.
- AAA. Mr. Webster to Portuguese Minister, August 10, 1850.
- BBB. The same to the same, September 5, 1850.

SECOND SERIES.

Correspondence relating to the claims of the owners, &c., &c., of the "Sheppard," "Miles," "Mayoun" and "Colonel Blum," against the Portuguese government.

- I. J. P. Hutchinson to American Chargé d'Affaires at Lisbon, February 11, 1833.
- II. G. W. Hopkins to Count Tojal, July 19, 1849.
- III. Count Tojal to J. B. Clay, March 22, 1850 (with enclosures.)
- IV. A. Bencher to Baron da Luz, October 22, 1847.
- V. G. W. Hopkins to the Duke of Saldanha, March 21, 1848.
- VI. The same to Gomez de Castro, November 7, 1848.
- VII. The same to Count Tojal, July 22, 1849.
- VIII. Count Tojal to Mr. J. B. Clay, April 11, 1850.
- IX. Mr. Clay to Count Tojal, April 13, 1850.

- X. The same to the same, November 17, 1849.
- XI. Count Tojal to Mr. Clay, March 11, 1850 (with enclosures.)
- XII. Mr. Clay to Count Tojal, April 30, 1850.
- XIII. Count Tojal to Mr. Clay, June 18, 1850.
- XIV. Mr. Clay to Count Tojal, June 19, 1850.
- XV. Mr. Hopkins to Visconde de Castro, March 10, 1849.
- XVI. Count Tojal to Mr. Clay, May 28, 1850 (with enclosure.)
- XVII. Mr. Clay to Count Tojal, May 29, 1850.

THIRD SERIES.

Correspondence relating to diverse claims of Portugese subjects against the government of the United States.

- 1. J. Correa de Serra to Mr. Monroe, December 20, 1816.
- 2. Mr. Monroe to J. Correa de Serra, December 27, 1816.
- 3. Richard Rush to Correa de Serra, March 13, 1817.
- 4. Correa de Serra to Richard Rush, May 23, 1817.
- 5. The same to J. Q. Adams, March 8, 1818.
- 6. J. Q. Adams to Correa de Serra, March 14, 1818.
- 7. Correa de Serra to J. Q. Adams, October 15, 1818.
- 8. J. Q. Adams to Correa de Serra, October 23, 1818.
- 9. Correa de Serra to Mr. Adams, November 13, 1818.
- 10. The same to the same, November 14, 1818.
- 11. J. Q. Adams to Correa de Serra, November 18, 1818.
- 12. Correa de Serra to Mr. Adams, December 11, 1818.
- 13. The same to the same, February 4, 1819.
- 14. J. Q. Adams to Correa de Serra, February 9, 1819.
- 15. M. Correa de Serra to Mr. Adams, March 17, 1819.
- 16. J. Q. Adams to Correa de Serra, April 22, 1819.
- 17. Correa de Serra to Mr. Adams, November 23, 1819.
- 18. F. F. de la Figanière to Mr. Clayton, April 27, 1849 (with enclosures.)
- 19. The same to the same, May 5, 1849 (with enclosure.)
- 20. Mr. Clayton to F. F. de la Figanière, May 8, 1849.
- 21. J. C. de Figanière é Morão to Mr. Clayton, May 25, 1850.
- 22. Mr. Clayton to J. C. de Figanière é Morão, May 30, 1850.
- 23. J. C. de Figanière é Morão to Mr. Clayton, May 30, 1850 (with enclosure.)
- 24. The same to the same, June 6, 1850.
- 25. Mr. Clayton to J. C. de Figanière é Morão, June 19, 1850.
- 26. J. C. de Figanière é Morão to Mr. Clayton, June 21, 1850.

27. Mr. Clayton to J. C. de Figanière é Morão, June 24, 1850.
28. J. C. de Figanière é Morão to Mr. Clayton, June 27, 1850.
29. The same to Mr. Webster, November 7, 1850.
30. The same to the same, November 16, 1850.
31. Mr. Webster to Mr. Figanière, January 8, 1851.
32. Mr. Figanière to Mr. Webster, February 4, 1851.

FIRST SERIES.

PAPERS RELATING TO THE CLAIM OF THE OWNERS OF THE "GENERAL ARMSTRONG," AND CORRESPONDENCE ON THE CLAIMS OF AMERICAN CITIZENS AGAINST PORTUGAL IN GENERAL.

A.

Captain Reid's Protest.

CONSULATE OF FAYAL, AZORES.

By this public instrument of declaration and protest, be it known unto all persons whom it doth or may concern, that on this present day, being the twenty-seventh day of September, eighteen hundred and fourteen, before me, John B. Dabney, Consul of the United States for the Azores, personally appeared Samuel C. Reid, commander of the American armed brig General Armstrong, of New York, of two hundred and forty-six tons, American measurement, &c., and on oath declared as follows, to wit: that he sailed in and with said brig from the port of New York, on the ninth day of September last past, well found, staunch, and strong, and manned with ninety officers and men, for a cruise; that nothing material happened on the passage to this island, until the twenty-sixth instant, when she cast anchor in this port soon after twelve o'clock at noon, with a view to get a supply of fresh water; that during the said afternoon his crew were employed in taking on board water, when about sunset of the same day, the British brig-of-war Carnation, Captain Bentham, appeared suddenly doubling round the northeast point of this port. She was immediately followed by the British ship Rota, of thirty-eight guns, Captain P. Somerville, and the seventy-four gun ship Plantagenet, Captain Robert Lloyd, which latter, it is understood, commanded the squadron; they all anchored about seven o'clock p. m., and soon after, some suspicious movements on their part indicating an intention to violate the neutrality of the port, induced Captain Reid to order his brig to be warped in shore, close under the guns of the castle; that, in the act of doing so, four boats approached his vessel, filled with armed men. Captain Reid repeatedly hailed them, and warned them to keep off, which they disregarding, he ordered his men to fire on them, which was done, and killed and wounded several men. The boats returned the fire, and killed one man, and wounded the first lieutenant; they then fled to their ships, and prepared for a second and more formidable attack. The American brig, in the meantime, was placed within half cable's length of the shore, and within half pistol shot of the castle. Soon after midnight, twelve, or as some state, fourteen boats, supposed to contain nearly four hundred men, with small cannon, swivels, blunderbusses, and other arms, made a violent attack on said brig, when a severe conflict ensued, which lasted near forty minutes, and terminated in the total defeat and partial destruction of the boats, with an immense slaughter on the part of the British. The loss of the Americans in the actions was, one lieutenant and one seaman killed, and two lieutenants and five seamen wounded. At day-break the brig Carnation was brought close in, and began a heavy cannonade on the American brig, when Captain Reid, finding further resistance unavailing, abandoned the vessel, after partially destroying her, and soon

after the British set her on fire. The said Captaid Reid, therefore, desires me to take his protest, as he by these presents does most solemnly protest against the said Lloyd, commander of the said squadron, and against the other commanders of the British ships engaged in this infamous attack on his said vessel, when lying in a neutral, friendly port; and the said Captain Reid also protests against the government of Portugal, for their inability to protect and defend the neutrality of this their port and harbor, as also against all and any other State or States, person or persons, whom it now doth or may concern, for all losses, costs, and damages that have arisen, or may arise, to the owners, officers, and crew of the said brig General Armstrong, in consequence of her destruction and the defeat of her cruise, in the manner aforesaid.

All which is sworn to be truth by the said Samuel C. Reid, Frederick A. Worth, first lieutenant, Robert Johnson, third lieutenant, Benjamin Starks, sailing master, John Brosnahan, surgeon, Robert E. Allen, captain of marines, Thomas Parsons, James Davis, Eliphalet Sheffield, and Peter Tyson, prize masters of said brig General Armstrong.

I, the undersigned, hereby certify that the foregoing instrument of protest is a true copy, taken from the original, deposited in my consular office. In testimony of which, I have hereunto set my hand, and affixed my official seal, this twenty-seventh day of September, eighteen hundred and fourteen.

JOHN B. DABNEY. [L. s.]

Disbursements and port charges of the American armed brig General Armstrong, Samuel C. Reid, commander, in this island, viz:

To health office, soldier, and fine for not having a bill of health	8,000
Filling and putting on board six pipes of water.....	2,000
Six pipes for water destroyed, at 8.....	48,000
A man sent on board the English man-of-war, with an official letter, in the night	3,000
Two boats sent on board the brig in the night	2,600
Custom-house visit.....	3,900
Men employed to carry the officers' and crew's baggage	3,400
Cash to the captain.....	20,000
Brokerage and interpreters' fees.....	12,000
Sundry official papers, certificates and seals.....	50,000
Paid harbor master for the hire of two cables, carrying out the same in the night, and damage which one of them received, being cut	62,800
To Captain Reid's part of stores for Amelia.....	66,000
Captain Reid, for his passage to Amelia Island	200,000
Stores for the officers.....	90,000
Cash to Captain Reid.....	100,000
	671,760
Commission, four per cent.....	26,870
	698,630
To cash to balance of a bill \$700.....	1,370
	Reis 700 000

Received from Captain Samuel C. Reid, his bill at thirty days' sight, on Jenkins & Havens, New York, which, when paid, will be in full.

JOHN B. DABNEY.

FAYAL, October 22, 1814.

B.

Translation of a despatch from the governor of the Azores islands.

FAYAL, September 28, 1814.

Divine Providence has been pleased to preserve this and the other Azores islands from the misery and inflictions of war for more than twenty years, during which period it has desolated all Europe; but when we had become free from fears, and had begun to enjoy the fruits of peace, which is due, in a great measure if not wholly, to the generosity, energy, and wisdom of the British government, we are now, for the first time, made witnesses to a horrible and bloody combat, occasioned by the madness, pride and haughtiness of an insolent British officer, who would not respect the neutrality maintained by Portugal in the existing contest between his Britannic Majesty and the United States of America.

I shall minutely detail to your excellency this disastrous event and its fatal consequences, in order that your excellency may submit them to our lord the prince regent, who will not fail to take them into his royal consideration, so as to obtain the satisfaction required for his sovereignty and independence.

On the 26th instant, at one in the afternoon, the United States privateer General Armstrong anchored in this port with the object of obtaining water. She was admitted in consequence of the neutrality of Portugal, and I ordered that she should depart on the following day before noon. On the same day, between seven and eight o'clock at night, his Britannic Majesty's squadron, consisting of the Plantagenet, seventy-four, under Robert Lloyd, commander-in-chief, the frigate Rota, Captain Somerville, and brig Carnation, Captain Bentham, also anchored in the harbor. At ten minutes past nine in the evening, I received from the American consul a note, (No. 1,) in consequence of which I immediately wrote to the British commander the letter, (No. 2,) and sent it at ten o'clock on the same night. I then went directly to the castle, and having been informed of the circumstances which led to these hostile proceedings, I learned that a boat had been sent from the British ships of war to examine the privateer, and on its return three others had been sent armed; and that the captain of the privateer not wishing to allow them to come on board of his vessel, a fire was begun on both sides, the result of which was that the second officer of the privateer was wounded, and two English were killed and seven wounded. After the retreat of the British, the privateer ceased firing and came to anchor under the castle, at a distance of a stone's throw. I considered this affair terminated, supposing that my letter (No. 2) would merit the attention of the British commander-in-chief; but about eleven o'clock I began to see that he was preparing new attacks and insults.

The brig lay very near the shore, with a great number of boats about her bows. About half past eleven they left her, and though there was not much light, I could count twelve boats, which, at a quarter of twelve, were preparing for an attack. So it happened; and ten minutes after midnight began the fight between the said boats and the privateer, which lasted, with the most sustained fire on both sides, for twenty-eight minutes.

The victory remained with the Americans, the English being almost entirely destroyed. I had the pain to be the eye-witness of, and very near to this determined conflict; and without being mistaken further than the

amount of twenty men, I can assure your excellency that the British force numbered three hundred men. The crew of the privateer were one hundred, of whom were killed the second officer and one other man, with five sailors and marines wounded. The loss of the British was most extraordinary; their consul told me he knew the list of the killed and wounded to amount to one hundred and sixteen, and it is supposed to have been much greater, for I myself saw three of the twelve boats without one person in them, and as they retreated I saw that one had only two on board, another only five, others only seven or eight. Of the killed were four officers; of the wounded few survived, as they were all wounded dangerously. I only wondered that any escaped to tell the story; for no attack could have been conducted in worse order.

Ten minutes after this disastrous combat, I received from the British commander-in-chief a note, (No. 3,) to which I replied at one o'clock by the note No. 4. The second insult had already terminated disgracefully to the British, and I was anxious to prevent a third, and the other consequences which might follow. So I conceived that if I could have a conference with that officer, I might dissuade him, if he were a reasonable man, from continuing the hostilities begun so insolently and repeated to the scandalous contempt of the law of nations. I therefore wrote the note No. 5, which was delivered, like No. 4, to the British officer, Mr. Huggins, who had brought me the No. 3; and I said verbally to him that I was preparing to go in person on board the ship, as her captain was suffering from an injury in his leg. But all was useless, and all my acts of civility and attention to that officer were unavailing.

At five minutes past four, in the morning of the 27th, I received at the castle, from the British vice consul, the note No. 6, from which I learned, definitely, that the British commander-in-chief would not desist from his determinations.

At that moment the brig was getting under sail, and approaching the land; at a quarter past six, being abreast of the merchant vessels in the port, she began her combat with the privateer, which defended herself so well that the brig, after suspending her fire for ten minutes, renewed it; but was immediately obliged to retire towards the flag-ship. During all this time, the privateer continued to fire from time to time at that vessel; but to no purpose, as I saw, from the great distance between them.

At half past seven the captain and crew of the privateer abandoned her, and came ashore with their baggage and part of their provisions and rigging; and I will now state what was my conduct on this point. At eight o'clock the brig returned and anchored close to the castle, and to the smallest vessel which remained in the port, and renewed her combat with the privateer, which was entirely abandoned; and for twelve minutes she did not cease firing her cannon on the privateer, which, besides being abandoned, was aground; in this attack she fired at least forty-five or fifty shot.

At a quarter past eight the captain of the brig ended his attack, considering the victory as gained; and sent his boats to sack the privateer, and then set fire to her. At nine she ended, and, weighing anchor, went and anchored at a place where such vessels usually lie.

I considered that this horrid tragedy, begun on the 26th instant, might be continued on land, after the destruction of the privateer, with that of her crew; but it was not so, and I rejoice greatly that I was deceived in my expectations. On land much property has been ruined near the place

of combat, and three persons were wounded ; one of them, a woman with five children, who is not expected to live. By this, and the No. 7, herewith sent, you will see a circumstantial account of the damages sustained.

I have related to your excellency, with all the simplicity of truth, the hostile proceedings which have taken place in this island on the 26th and 27th instant, until nine o'clock of the latter day ; and I now pass naturally to speak of the measures which I took to secure good order, and to prevent, as far as possible, all insults, so as to save my own honor and to preserve this island, the government of which has been confided to me by your majesty, under your august sovereignty.

I know well that I was perfectly aware that force should be repelled by force, and that this is permitted by right ; however, the unfortunate and miserable condition in which this island is situated, as regards its defences, prevented me, on the present critical occasion, from putting into practice my desires to comply with my duty, by defending the neutrality of Portugal by arms. Nevertheless, after very serious reflections, I abandoned all those ideas which I had entertained of defending the neutrality of Portugal and the rights of sovereignty of our lord the prince regent, being certain that the result would be the most cruel and unfortunate ; and finding that I could do nothing, either by force or by entreaties, to prevent the British commander-in-chief from acting as he did, I labored not to increase his indisposition towards us, and to preserve myself in the extreme of neutrality.

For this reason, when asked by the consul of the United States to give him leave to send thirty seamen of his nation, who were then in this island, on board the privateer, in order to increase her force for her defence, I absolutely refused my consent. In the morning of the 27th, observing, when day appeared, that the American seamen were destroying the English boats, which were driven ashore without crews, I ordered them to go on board of their vessel. I soon learned that the Americans, abandoning the privateer, were carrying ashore muskets, pistols and swords ; and I thereupon sent soldiers to seize and bring to the castle all these arms, which was done peacefully ; and, with the same view, I gave orders respecting the English seamen and soldiers who might come ashore ; of the latter, only one was found with a pistol, which was taken from him and delivered to the commander. I made known to the chief of the British forces that it would be proper for him to take care to let as few of his people as possible come ashore, and that positively none would be allowed to land armed. To this he agreed ; and, from the compliments which he afterwards sent to me by an officer, with the consul, I conceive that he was aware of the great evil done by his hostile expeditions in a port not only neutral, but, moreover, belonging to an old friend and ally of his nation.

On this same occasion, he sent to beg permission for the funeral of the officers killed to take place on land, at two in the afternoon ; and that some soldiers might be landed to perform the last honors to the dead. All this I granted, and I gave the requisite orders that no American should appear in the vicinity of the place where these proceedings were to be conducted, in order to prevent any quarrel or fight which might otherwise occur.

After the battle, on the morning of the 27th, I ordered the standard not to be hoisted over the castle ; not only to prevent it from being fired on, but also to show the British commander my resentment on account of the insult committed by him ; but, in the act of disembarking the bodies for

the funeral, I ordered the standard to be hoisted as soon as the boats touched the shore, with the bodies of the officers killed. All the officers of the squadron landed, except the commander-in-chief and some others, with sixty soldiers and musicians. On my part, I ordered the principal guard to be increased to the number of forty soldiers, in order to salute the funeral as it passed the castle; and also, under that pretext, to be ready for any disorder which might occur.

This religious act took place with quiet, notwithstanding the English officers were disturbed, in spite of all my care, by two American seamen, who, as soon as the funeral began, gave shouts of joy on account of the fight and retreat in which those officers lost their lives; but no consequences ensued, for they were immediately seized, agreeably to orders which I had given in anticipation, and the English commander-in-chief was informed of every thing. All the English officers and soldiers embarked at six o'clock without the occurrence of any thing worthy of note having then or since occurred, except that disturbances were made by the Americans in consequence of drunkenness.

Yesterday, observing that, notwithstanding the privateer had been burnt, some Portuguese and Americans were entering her in order to steal what might remain on board, as well as the sails which hung on the masts, I had sentinels placed in proper positions to prevent such robberies, in order that no difficulty might arise on this account on the part of the British. At two o'clock in the evening, I sent the *Juin da Fora*, on the part of the custom-house, to save what remained of those articles, and to look for any which had been taken away. To day, the British consul came to my quarters to say that he had agreed with the consul of the United States that as there might arise some dispute as to the ownership of those remains saved from the fire, being desirous to avoid such, the clear produce of the sale of the fragments might be applied to the repair of the houses ruined; and that, having obtained the verbal assent of the *Juin da Fora*, as far as concerned that officer, he wished to have also my approval. I replied that I did not wish to interfere at all in the matter, which they might arrange as they pleased.

This morning the British commander-in-chief sent to compliment me, and to thank me for the attention and measures which I had taken to cause his officers who had been killed to be buried properly; excusing himself on the ground of illness, for not having been to see me in person, and inviting me, at the same time, to go on board of his vessel, as he was very anxious to speak to me. I answered I thanked him for his politeness, but excused myself from complying with his request, as I did not consider his invitation or my acceptance of it either proper or decorous.

I moreover inform your excellency that this same British squadron, whose commander has treated this island so badly, quitted this port on the 9th instant, after lying in it four days, in which water, provisions and other articles required, to the amount of 2,700 [milreis,] were furnished, with every attention and care which [I] endeavored to bestow on all subjects of his Britannic Majesty, and all other foreigners.

I trust that my conduct on this occasion will meet with the approbation of your Excellency and of the Prince Regent.

God preserve your Excellency.

ELIAS JOSE RIBEIRO.

FRANCISCO XAVIER DE BRITO.

His Excellency ANTONIO DE ARANJO ACEVEDO.

C.

From the Marquis de Aguiar, Minister of Foreign Affairs, &c., to Lord Strangford, E. E. and M. P. of Great Britain.

[Translation.]

PALACE OF RIO JANEIRO,
December 22, 1814.

In complying with the orders just received from his royal highness the Prince Regent of Portugal, his master, the undersigned has the honor of transmitting to his excellency Lord Strangford, envoy extraordinary, minister plenipotentiary for his Britannic Majesty, a copy of advices that were received a short time since from the governor of Fayal, communicating the proceedings of a British squadron that had anchored there under the command of R. Lloyd.

On a perusal of those papers, his excellency will observe the outrageous manner in which that commander violated the neutrality his royal highness had resolved to maintain during the war that unhappily exists between England and the United States, by audaciously attacking the American privateer General Armstrong, in the port of Fayal, and under the guns of the castle, notwithstanding the remonstrances of the governor, founded on the laws of nations, and the friendship and alliance that existed between the two sovereigns.

His excellency will likewise observe the base attempt of the British commander, at the time he commenced the unprovoked attack on the American privateer, to attribute those violent measures to the breaking of the neutrality on the part of the Americans in the first instance, by repelling the British armed barges that were sent for the purpose of reconnoitering that vessel, advocating with the most manifest duplicity that they were consequently the aggressors; but what appears still more surprising is the arrogance with which the British commander threatened to consider the territory of his royal highness as enemies should the governor adopt any measures to prevent them from taking possession of the American privateer, which they subsequently plundered and set on fire.

The censurable moderation of the governor during these outrages would have induced his royal highness to have immediately caused a process to have been instituted for the punishment of that officer, did not the idea of his having been governed by a wish to guard the inhabitants of that island from the ravages and evils which the British commander would not have failed to commit, in conformity with his declaration already alluded to in his haughty intimations, merit his royal consideration.

In effect, this is the unhappy situation in which his royal highness perceives the fate of his subjects involved, as regards the proceedings of the subjects of his ally—there existing for this reason a contradiction between the ancient and intimate relations that unite the two sovereigns, and the rancor and enmity such facts are calculated to produce between the individuals of the two nations.

His royal highness, at the same time he has directed his minister at the court of London to make the strongest representations before the Prince Regent of the United Kingdom, and to require satisfaction and indemnification not only for his subjects, but for the American privateer, whose

security was guarantied by the safeguard of a neutral port, orders it to be signified to his excellency Lord Strangford, that he may inform his government of the unfavorable impression the conduct of that British commander has caused in the mind of his royal highness, thus having completed the measure of hostile aggravations with which the officers of the British marine appear determined to sever the ties that have for centuries united the two countries.

The undersigned renews the expressions of high consideration, &c., &c.
MARQUIS DE AGUIAR.

D.

[Extract.]

John Quincy Adams to the Chevalier Corrêa de Serra.

DEPARTMENT OF STATE,
March 14, 1818.

SIR: * * * It is my duty to remind you, sir, and to request you to recall the attention of your government to cases of a very different description, upon which the minister of the United States at Rio de Janeiro has been long, and hitherto without success, claiming satisfaction to the United States and indemnity to their citizens for injuries and losses sustained by them within the territorial jurisdiction of your government.

I refer you particularly to the case of the privateer General Armstrong, destroyed within the harbor of Fayal by a foreign force. Of the facts in that case there is and can be no question, having been ascertained not only by the statements of the injured parties, but by the official reports of your own commanding officer. It is hoped your government will, without further delay, grant to the sufferers by that transaction the full indemnity to which they are by the laws of nations entitled.

Be pleased, sir, to accept, &c., &c.,

JOHN QUINCY ADAMS.

E.

Mr. Kavanagh to the Minister of Foreign Affairs of Portugal.

LEGATION OF THE UNITED STATES OF AMERICA,
Lisbon, February 14, 1837.

The undersigned, having heretofore made mention to his excellency the Viscount de Sã da Bandeira, Minister of Foreign Affairs, of a claim which he had been instructed to present for damages sustained by several citizens of the United States in the port of Fayal, from an English naval force during the late war between the said States and Great Britain, he now has the honor to bring the case to the special consideration of her majesty's government.

For that purpose he encloses copies of certain documents, which set forth

the facts on which the claim is founded. It will appear therefrom, that on the 9th day of September, 1814, the United States of America being then engaged in war with Great Britain, the American private armed brig General Armstrong, of seven guns and ninety men, duly furnished by the President of the United States with letters of marque and general reprisal, and commanded by Captain Samuel C. Reid, sailed from the port of New York on a cruise. On the 26th of the same month, at mid-day, she anchored in the port of Fayal, one of the Azores or western islands belonging to the crown of Portugal, which was neutral in said war. In the evening of the same day a squadron of his Britannic Majesty's ships anchored in the same harbor; and, in consequence of some movements on the part of the latter, indicating hostile intentions, Captain Reid caused his vessel to be placed within half cable's length of the shore, and within half pistol-shot of the castle. During the ensuing night two unsuccessful attempts were made to capture the privateer from armed barges despatched by the British commander. At 9 o'clock p. m., after the first assault, the consul of the United States for the port of Fayal applied to the governor of the place, requesting his excellency to protect the privateer in such manner as would cause the assailants to desist from any further attempt. A remonstrance interposed by the governor was unavailing. The consul had also requested that several American seamen, then at Fayal, might be permitted to go on board the privateer for the purpose of assisting in defending her in case of a second attack. Permission, however, was refused.

In the morning of the 27th, at day-break, one of the British ships was placed near the General Armstrong, and commenced firing. Captain Reid, with his crew, deemed it useless to offer any further resistance, retreated to the shore, abandoning their vessel, which was totally destroyed.

It is for this unwarrantable destruction of property in a neutral and friendly port, and for damages consequent thereon, that the owners, officers and crew of the privateer aforesaid now claim indemnity.

The documents forwarded herewith are respectively marked A, B, C.

A is a copy of the letter addressed by the consul of the United States, in the evening of the 26th of September, 1814, to his excellency the governor of Fayal, requesting his interposition.

B is the copy of a protest made at Fayal on the 27th of September, 1814, by Captain Reid and his officers.

C is the copy of a letter addressed by the consul aforesaid on the 30th September, 1814, to his excellency the governor of Fayal, enclosing a copy of the said protest.

The undersigned avails himself of this occasion to renew to his excellency the Viscount de Sa da Bandeira assurance of his distinguished consideration.

EDWARD KAVANAUGH.

F.

[Translation.]

João J. G. de Castro to General Washington Barrow, &c., &c., &c.

Replying to the notes addressed to this department by your predecessor on the 17th of February, 1837, and by yourself on the 25th of May and

10th of October, 1842, in which an indemnity is claimed for the destruction of the American armed brig, General Armstrong, caused by his Britannic Majesty's ships *Carnation*, *Plantagenet* and *Rota*, in the port of Fayal, on the 26th and 27th of September, 1814, during the war between the United States of America and Great Britain, I have the honor to make known to you that her majesty's government cannot but be surprised that this claim made its appearance after a silence of so many years.

The necessary orders were given to proceed to the most exact examinations, from which some delay has occurred in this answer. It was impossible without them to obtain a thorough knowledge of a case represented (*figurab*) in said notes under such serious circumstances.

The accounts received all agree that the American brig, under the pretext that four boats from the said British vessels were approaching her, fired upon them, killing some of the men and wounding others.

It is alleged on the part of the United States that these boats contained armed men, who had a hostile intention. At the same time, it is affirmed on the part of Great Britain that they only carried inoffensive men, who were going ashore from their ships on duty, and that they casually met the American brig when she was preparing to leave the port of Fayal.

It is however, an undeniable fact that the first shot came from on board the American brig General Armstrong, thus evidently constituting her the aggressor, and a violator of the neutrality of the port of a friendly nation, by whom she had been received with all kindness; and giving cause for the conflict which afterwards took place, with the most serious want of that respect due to the Portuguese territory.

Notwithstanding this, and although there was not on the island of Fayal more than one hundred infantry and eight artillery soldiers, and the artillery in the castle of Santa Cruz, as well as in the other forts, was in a ruined state, a circumstance which rendered it absolutely impossible to avoid (*evitar*) hostilities by force, yet the military governor was not prevented from employing every means of persuasion to obtain that end, in a long and energetic correspondence which he carried on with the principal commander of the British vessels, as was testified by Mr. Dabney, consul of the United States at Fayal, in an official communication to his government of all the facts, under date of the 25th of October, 1814.

The accusation against the governor of Fayal of not having consented to the requisition of the said consul to permit the embarkation of a number of American citizens to augment the number of the defenders of the said brig, cannot be sustained from the moment it is considered that the commander of the British vessels might, with just cause, have accused him of partiality, as he had also refused him the assistance asked to apprehend (*apprehender*) the American brig, although she was the aggressor.

The government of his Britannic majesty, appreciating the rashness (*temeridade*) with which his officers acted in a neutral port against said brig, without first recurring to the authorities of the country, had no hesitation in apologizing to the Portuguese government and indemnifying the inhabitants of Fayal for damages sustained by the firing of the British vessels.

By an analogy of reasoning, far from her majesty's government being considered as bound for any indemnity for the destruction of the American brig, it would have every motive for asking and expecting an apology for the attempt (*attentado*) committed in the Portuguese territory by that brig;

seeing that the first shot was unquestionably fired by her, and that the commander did not previously have recourse to the authorities of the country, which was only done by the American consul after the offensive provocation was committed by said brig, and that the fatal consequences were inevitable.

The government of her majesty trusts that the government of the United States of America cannot fail, in its enlightened spirit of rectitude, to acknowledge that unjust ground exists for the government of her majesty to consider itself bound for any indemnity for the destruction of the brig General Armstrong, produced by a deed (*feito*) of her own of a very serious nature, in which the Portuguese government was the first offended against and her subjects sufferers; a deed, the accomplishment of which the Portuguese authorities, notwithstanding the aggravated circumstances, used every means in their power to prevent.

Requesting you to bring the matter referred to to the knowledge of your government, I avail myself, with much satisfaction, of this occasion to renew the assurances of my most distinguished consideration.

God preserve you!

Office of the Minister of State for Foreign Affairs, the 3d of August, 1843.

JOSE JOAQUIM GOMES DE CASTRO.

General WASHINGTON BARROW, &c., &c., &c.

G.

Mr. Clayton to Mr. Hopkins.

[No. 12.]

DEPARTMENT OF STATE,

Washington, April 20, 1844.

SIR: Your despatch No. 15, of the 11th ultimo, was received here on the 9th instant. I have submitted it to the President, and represented and explained to him the very unsatisfactory condition in which the claims of citizens of the United States upon the Portuguese government have been permitted to remain—many of them for a long series of years, in spite of the repeated remonstrances of the American government, and the untiring efforts of successive diplomatic representatives from this country, who have under instructions again and again vainly appealed to the government of Portugal for their adjustment and liquidation. These appeals have been encountered by harassing delays, until at length the patience of the claimants and of their government has become exhausted. Reluctant, nevertheless, to take any steps which might, by possibility, hazard the amicable relations of the two countries, and clinging still to the hope that Portugal is not obstinately bent upon closing her ears against a friendly power, by perpetuating the wrongs of which we complain, the President considers his accession an auspicious moment to make one more appeal to Portugal.

The injustice done us, and the delay of redress, would justify the severest animadversion in speaking of these outrages, which of late seem to have increased in number and magnitude, in a direct proportion to the impunity with which they have been hitherto inflicted. In the intercourse of nations there is, and ought to be, a limit to such ill-treatment, beyond which endu-

rance ceases to be a virtue. That limit, it is believed, will soon have been reached if Portugal shall still continue to be deaf to our just complaints. The responsibility must needs rest with her, if the American government should be forced by a sense of duty and of self-respect into ulterior measures to enforce its demands. These measures, indeed, which a due regard to national honor may thus render necessary, belong, as you will understand, to the consideration of a distinct branch of the government.

You are thoroughly conversant with the nature and details of our various claims upon Portugal, and with all the means, direct and indirect, which diplomatic ingenuity has exercised, to retard or to defeat their adjustment. It will not be needed, therefore, even if I possessed the necessary leisure, that I should enter into the particulars which each case presents. All that I shall have occasion to do, and mean to do at this time, is to direct your attention to the following principal cases, and to pass them before you in a general review, as a preliminary to the present instructions which I am directed by the President to give you respecting them.

The oldest case of wrong, and the most remarkable, is that of the privateer "General Armstrong," Captain S. C. Reid, destroyed in 1814 by a British squadron, under the guns of the Portuguese fortress which protects the harbor of Fayal, after a defence as gallant and memorable as any act recorded in naval annals. This case will receive your earliest attention. It is as well known to Portugal as it is to us; and you are in possession of everything respecting it that is required. In a despatch, No. 23, of the 16th September, 1843, Mr. Barrow, our representative at Lisbon, communicated a note from the minister of foreign affairs of Portugal, on the subject, unfavorable to the claim, dated 3d August of that year. That note, it appears, never received a proper reply. It will be found at page 48, printed Senate document, 1st session, 29th Congress, containing the President's message and accompanying papers, communicating, in answer to a call from Congress, all the information on file in relation to the claim. The document has formerly been transmitted, but another copy is now sent. From the proceedings it will be seen that Congress conceived it to be still within the competency of the Executive to effect a settlement; and it was accordingly referred back without action to this department.

The next claim presented is that of Captain James Hall, of the American ship "Shepherd," which grew out of the seizure of a large sum of money forcibly taken on 17th February, 1828, from his ship by the Portuguese authorities in the harbor of Lisbon. The facts of this case are shown with force and perspicuity in your despatch No. 8, of the 29th June last; and I concur with you in opinion that the American government owes it to its own dignity, no less than to the rights of an injured American citizen, to demand and enforce its payment. This claim will not be suffered to repose in the oblivion to which it has been so long consigned; and you will insist upon the execution of the judgment or sentence pronounced in favor of Hall on the 29th November, 1828. Very full instructions on the subject were given to Mr. Kavanagh, by Mr. Forsyth, in despatch No. 29, of 21st May, 1838. More than ten years have since elapsed, and the delay of settlement up to this period is to be regarded in no other light than as an aggravation of the original wrong.

The case of the ship "Miles" and cargo, of Warren, Rhode Island, constituting a fair claim upon Portugal for the payment of a cargo of oil taken by the officers and applied to the uses of that government, presents and

adds another outrage to the list of our wrongs. The first instructions respecting this claim were transmitted from this department in a despatch to Mr. Rencher, under date of 18th October, 1843, accompanied by various papers and evidence in illustration, from H. G. O. Colby, in behalf of Wheaton and others, owners of and interested in the vessel. The parties were directed to correspond and did correspond with the legation, and supplied ample testimony; upon which the claim was urged with zeal and assiduity, but as usual, without success. Your predecessor, with your sanction and concurrence, made an elaborate reply to the objections that had been raised in this case by the Portuguese minister of foreign relations; and he submitted a general and conclusive argument upon the disputed points. This able note comprised a fair and full statement of the case. The argument was unanswerable, and in fact was never answered. No notice whatever, it would seem, has yet been taken of this note, nor indeed of your own subsequent communications on the same subject, although a portion of the claim was distinctly admitted by the Portuguese minister at an early period of the correspondence. If this claim be not allowed and provision made for its liquidation—due, as you justly observe, not less to the violated rights of our citizens than to our own self-respect—indemnification will have to be insisted on. The correspondence and papers in this case were called for by a resolution of the Senate of the 24th April of last year, and communicated, with a report from this department. A copy of the printed document is herewith sent for your use.

Again: on the 31st January of the present year, this department was forced to direct attention to another injury perpetrated by Portugal upon American citizens. This was the case of the schooner *Colonel Blum*, in which case the owners and underwriters presented their claim against that government, for losses sustained in consequence of the illegal seizure of that vessel, and her subsequent destruction at the Isle of Sal, Cape Verds.

A number of documents and papers, supplied by the individuals aggrieved, were then forwarded; and in further illustration of the facts supporting the claim, I now transmit to you two other series of papers, recently communicated to me by the Secretary of the Navy, lists of which are here annexed. I need scarcely refer to Mr. Buchanan's despatches respecting this case, which instructed you to demand reparation and indemnity for acts so flagrantly unjust and inhuman, the recurrence and repetition of which, it was remarked, could only tend to embarrass and impair the relations of the two countries. I perceive, too, by your last despatch, (No. 15,) that you were about to urge this case upon the Portuguese government.

Following in the immediate wake of the last, another "outrage upon an American vessel," the brig *Magoun*, H. A. Russel, late master, has been brought to my notice, by a letter dated New York, 31st ultimo, from Mr. George M. Ushur, a copy of which I herewith transmit, together with the original papers that accompanied it. The additional evidence promised by the writer, will be forwarded to you as soon as it shall have come to hand. Mr. Ushur was promptly informed that you would receive due instructions the moment the case should be properly set forth and substantiated by evidence. Mr. Ushur's letter was received at the department on the 4th instant; your despatch, (No. 15,) giving further particulars of this new wrong, reached me a few days after, viz: on the 9th instant. From your statement it is clear, not only that the *Magoun* was illegally seized by the Portuguese authorities at Mozambique, but that both the captain and the

mate died in consequence of the barbarous treatment they received at the hands of the local authorities of that place. The matter has been referred to the Secretary of the Navy, with a request that he would cause to be instituted a strict investigation of the facts, through the commanding officer of our squadron on the Coast of Africa. His report, and all other evidence obtained, will also be sent to Lisbon. But feeble hope is entertained that any exertions on your part, in regard to it, will be crowned with greater success than that which has attended former applications. It is revolting to contemplate such a succession of unfriendly acts; exhibiting a studied course of conduct inconsistent with the relations which ought to subsist between Christian powers. It is high time that the just indignation of the American government should be aroused and directed towards the protection of the rights of these, our suffering citizens.

I have drawn a very imperfect picture of the grievances so long borne by our countrymen in their intercourse with the friendly government of Portugal. You are able to complete the sketch; you are exactly informed as to the history, character and condition of all our claims on Portugal; and will, therefore, as I have already remarked, require no specific or minute directions respecting them, from this department. You have in possession, also, the evidence to support them which has been received, and all correspondence in regard to them which has passed. Deeply sensible, both as a minister and a man, of the gravity of the subject, and painfully convinced of the hopelessness of continuing to prosecute them in the ordinary mode prescribed and adopted in the intercourse of civilized nations, bound together by ties of interest and treaty obligations, you have invoked the interposition of your government, and recommended a recourse to other and more decisive measures than those heretofore relied on.

It is under these circumstances—here rather adverted to than unfolded in detail—that the President has resolved to make one more attempt to procure satisfaction for American claimants, and to assert the national honor; and in this resolve it will be your duty to convince the Portuguese government that he is in earnest, and will not be turned aside from his purpose. You will impress upon Portugal this idea, that, on entering upon the duties of his high office as chief magistrate of the United States, the President determined that he would assert the rights of his fellow-citizens upon foreign governments; proceeding upon the principle, often avowed by our government, “to make no demand not founded in justice, and submit to no wrong.”

The mode of executing these instructions is confided, in a great measure, to your own discretion. It may be your election to address a general note on the subject, embracing brief statements of facts, and suggesting the measure of compromise, redress or indemnity that will be accepted; or you may present each claim in a separate form. You will make it distinctly understood that the period of procrastination has gone by, and that immediate decision is demanded. Further delay will be construed into denial. It is in contemplation to lay before Congress the result of this final appeal at an early period of the next session. Should it so happen, unfortunately, that a satisfactory answer be denied or withheld until the arrival of the period for making the purposed communication, the subject will then be submitted as it shall at the time stand to that body; and the Portuguese government may rest assured that any measures which Congress in their

wisdom may decide upon as due to our citizens and country, will be faithfully carried out by the Executive.

In presenting this view of the subject to the consideration of the Portuguese government, as a frank avowal of a fixed determination on the part of the United States government, you will be most careful to represent, at the same time, the extreme anxiety of the President to avoid being forced to suspend or interrupt present diplomatic relations with Portugal; because a recourse to that measure would, most probably, prove to be but the antecedent to reprisals.

I am, sir, respectfully, your obedient servant,

JOHN M. CLAYTON,

GEORGE W. HOPKINS, Esq., &c., &c.

H.

Mr. Hopkins to the Count Tojal.

LEGATION OF THE UNITED STATES,
Lisbon, June 28, 1849.

SIR: The undersigned, in obedience to the very earnest instructions of his government, has the honor to invite *once more* the attention of her most faithful Majesty's government to the claim of the owners, officers and crew of the American privateer General Armstrong. The outrage which gave rise to this claim took place on the 26th and 27th of September, 1814. On the 30th of the same month, John B. Dabney, consul of the United States at Fayal, enclosed to the governor of that place a copy of the protest of Captain Samuel C. Reid, of the brig General Armstrong, and notified his Excellency that, "relying on the well known justice and magnanimity of His Royal Highness the Prince Regent of Portugal, Captain Reid cannot doubt, when a regular representation is made by the American government to the court of Portugal of this unparalleled outrage on the part of the British ships now here, that the owners, officers and crew of the said brig will receive ample indemnification for the immense loss they have severally sustained." On the 5th of the following month the consul communicated intelligence of the destruction of the brig to the Secretary of State of the United States, and on the 6th to Thomas Sumpter, the American minister at the court of Portugal. On the 3d of January, 1815, James Monroe (then Secretary of State) transmitted the protest of Captain Reid, with other documents relating to the destruction of the brig General Armstrong, to the Minister Plenipotentiary of the United States, with a request "to bring all the circumstances of the transaction distinctly to the view of the Portuguese government, and to state the claim which the injured party has to immediate indemnification. The demand for reparation on the part of the government of the United States had been justly anticipated by his Royal Highness the Prince Regent, who, as early as the 22d of December, 1814, had ordered his Minister of Foreign Affairs to transmit to Lord Strangford, Envoy Extraordinary and Minister Plenipotentiary of his Britannic Majesty, a copy of advices which he had recently received from the governor of Fayal in relation to the proceedings of a British squadron, which had anchored there under the command of R. Lloyd.

The undersigned is not aware that the validity of this claim was ever disputed by the Portuguese government during the reign of the late Prince Regent.

To review the history of this transaction, and the negotiation which has so long delayed its satisfactory determination, is not now the purpose of the undersigned, except so far as that may become necessary in replying to the note of his excellency the Visconde de Castro, addressed to General Barrow, under date of the 3d of August, 1843.

The undersigned has given to that note the most careful examination, and flatters himself that he will be able to demonstrate the misapprehensions and errors which characterize it, and which for the first time in the progress of a most protracted negotiation, utterly denies and repudiates every fact which may be regarded as necessary to give validity to the claim; facts, too, which the undersigned undertakes to show had previously been both proved and admitted by the Portuguese government. His Excellency was pleased to commence his note of the 3d of August with the remark that "her Majesty's government cannot be surprised that this claim made its appearance after a silence of so many years." The undersigned cannot but remind his Excellency that this very note purports to be a reply, in part, to a note addressed to the government of Portugal by Mr. Kavanagh, under date of the 17th of February, 1837, which it is fair to presume had never before been honored with a reply. The undersigned has already shown that this claim had been duly presented for liquidation as early as 1814, and the forbearance of the United States, instead of being a matter of just surprise to any one, arose evidently from a desire to await the issue of the demand so honorably and so promptly made by the Prince Regent of Portugal upon the English government, for satisfaction and indemnification of the privateer. Considerations growing out of the separation of Brazil from the mother country, and the civil struggles which continued many years between contending dynasties and parties in Portugal, furnish other and far more persuasive motives for the forbearance thus required by the expression of the surprise of her Majesty's government. Certainly this claim has never been abandoned by the United States. And the undersigned cannot but remind your Excellency that all the delay in the prosecution of this claim, "the silence of many years," is wholly and exclusively chargeable to her Majesty's government, as abundantly appears from all the correspondence which has taken place on the subject.

The undersigned will now proceed to notice the following grounds assumed by his Excellency in the note referred to, in which he asserts that "The accounts received all agree that the American brig, under the pretext that four boats from the British vessels were approaching her, fired upon them, killing some of the men and wounding others.

"It is alleged on the part of the United States that these boats contained armed men who had a hostile intention. At the same time it is affirmed on the part of Great Britain, that they only carried inoffensive men who were going ashore from their ships on duty, and that they casually met the American brig when she was preparing to leave the port of Fayal.

"It is, however, an undeniable fact that the first shot came from on board the American brig General Armstrong, thus evidently constituting her the aggressor and violator of the neutrality of the port of a friendly nation by whom she had been received with all kindness; and giving cause for the

conflict which afterwards took place, with the most serious want of that respect due to the Portuguese territory."

His Excellency in a subsequent paragraph proceeds to say that "By an analogy of reasoning, far from her Majesty's government being considered as bound for any indemnity for the destruction of the American brig, it would have every motive for asking and expecting an apology for the attempt (*attentado*) committed in the Portuguese territory by that brig; seeing that the first shot was unquestionably fired by her, and that the commander did not previously have recourse to the authorities of the country, which was only done by the American consul after the offensive provocation was committed by said brig, and that the fatal consequences were inevitable."

These are the *facts* assumed by his Excellency and these the conclusions which he has labored to deduce from them. If warranted by the evidence, then unquestionably "the government of the United States of America could not fail in its enlightened spirit of rectitude to acknowledge that this claim was unfounded;" but the undersigned will now endeavor to demonstrate that his Excellency has wholly misconceived every material fact in the case, as heretofore both proved and admitted by his own government. The first evidence to which the undersigned has the honor to invite the attention of your Excellency is the official despatch of the governor of Fayal to his government, under date of the 28th of September, 1814.

"Divine Providence has been pleased to preserve this and the other Azores islands from the misery and afflictions of war for more than twenty years, during which period it has desolated all Europe; but when we had become free from all fears and had begun to enjoy the fruits of peace which is due in a great measure, if not wholly, to the generosity, energy and wisdom of the British government, we are now, for the first time, made witnesses to a horrible and bloody combat, occasioned by the madness, pride and haughtiness of an insolent British officer who would not respect the neutrality maintained by Portugal in the existing contest between his Britannic Majesty and the United States of America.

"I shall minutely detail to your Excellency this disastrous event and its fatal consequences, in order that your Excellency may submit them to our lord the Prince Regent, who will not fail to take them into his royal consideration so as to obtain the satisfaction required for his sovereignty and independence.

"On the 26th instant, at one in the afternoon, the United States privateer General Armstrong, anchored at this port with the object of obtaining water. She was admitted in consequence of the neutrality of Portugal, and I ordered that she should depart on the following day before noon. On the same day, between seven and eight o'clock at night, his Britannic Majesty's squadron, consisting of the *Plantagenet*, 74, under Robert Lloyd, commander-in-chief, the frigate *Rota*, Captain Somerville, and brig *Carnation*, Captain Bentham, also anchored in the harbor. At ten minutes past nine in the evening I received from the American consul a note, (No. 1,) in consequence of which I immediately wrote to the British commander the letter, (No. 2,) and sent it at ten o'clock on the same night. I then went directly to the castle, and having been informed of the circumstances which led to these hostile proceedings, I learned that a boat had been sent from the British ships of war to examine the privateer, and on its return three others had been sent armed, and that the captain of the

privateer not wishing to allow them to come on board of his vessel, a fire was begun on both sides, the result of which was that the second officer of the privateer was wounded, and two English were killed and seven wounded. After the retreat of the British the privateer ceased firing and came to anchor under the castle, at the distance of a stone's throw. I considered this affair terminated, supposing that my letter (No. 2) would merit the attention of the British commander-in-chief, but about eleven o'clock I began to see that he was preparing new attacks and insults.

"The brig lay very near the shore, with a great number of boats about her bows. About half past eleven they left her, and though there was not much light I could count twelve boats, which, at a quarter of twelve, were preparing for an attack. So it happened, and ten minutes after midnight began the fight between the said boats and the privateer, which lasted with the most sustained fire on both sides for twenty-eight minutes.

"The victory remained with the Americans, the English being almost entirely destroyed. I had the pain to be the eye witness of, and very near to this determined conflict, and, without being mistaken further than the amount of twenty men, I can assure your excellency that the British force numbered three hundred men. The crew of the privateer were one hundred, of whom were killed the second officer and one other man; with five sailors and marines wounded. The loss of the British was most extraordinary; their consul told me that he knew the list of the killed and wounded to amount to one hundred and sixteen; and it is supposed to have been much greater, for I myself saw three of the twelve boats without one person in them, and as they retreated I saw that one had only two on board, another only five, others only seven or eight. Of the killed were four officers; of the wounded few survived, as they were all wounded dangerously. I only wondered that any escaped to tell the story, for no attack could have been conducted in worse order.

"Ten minutes after this disastrous combat I received from the British commander-in-chief a note (No. 3,) to which I replied at one o'clock by a note (No. 4.) The second insult had already terminated disgracefully to the British, and I was anxious to prevent a third and the other consequences which might follow. So I conceived that if I could have a conference with that officer, I might dissuade him, if he were a reasonable man, from continuing the hostilities begun so insolently and repeated to the scandalous contempt of the law of nations. I therefore wrote the note No. 5, which was delivered like No. 4, to the British officer, Mr. Huggins, who had brought me the No. 3, and I said verbally to him, that I was preparing to go in person on board the ship, as her captain was suffering from an injury in his leg. But all was useless, and all my acts of civility and attention to that officer were unavailing.

"At five minutes past four in the morning of the 27th I received at the castle, from the British vice-consul the note No. 6, from which I learned definitively that the British commander-in-chief would not desist from his determination.

"At that moment the brig was getting under sail and approaching the land; at a quarter past six, being abreast of the merchant vessels in the port, she began her combat with the privateer, which defended herself so well that the brig, after suspending her fire for ten minutes, renewed it, but was immediately obliged to retire towards the flag-ship. During all this time

the privateer continued to fire from time to time at that vessel, but to no purpose as I saw from the great distance between them.

"At half past seven the captain and crew of the privateer abandoned her, and came ashore with their baggage and part of their provisions and rigging, and I will now state what was my conduct on this point. At eight o'clock the brig returned and anchored close to the castle, and to the smallest vessel which remained in the port, and renewed her combat with the privateer, which was entirely abandoned, and for twelve minutes she did not cease firing her cannon on the privateer, which besides being abandoned, was aground; in this attack she fired at least forty-five or fifty shot.

"At a quarter past eight the captain of the brig ended his attack, considering the victory as gained; and sent his boats to sack the privateer and then set fire to her. At nine she ended, and weighing anchor went and anchored at the place where such vessels usually lie."

This minute and official report of the governor of Fayal to his government, in relation to the destruction of the brig General Armstrong is respectfully submitted as a reply in part to the extraordinary note of his Excellency of the 3d of August, 1843. And the undersigned next calls the attention of your Excellency to the note No. 4, from the same officer to the commander of the naval forces of his Britannic Majesty under date of the 27th September, 1841. "I received your letter and by it I see the motives which induce you to violate the neutrality of this port, in the contest now existing between his Britannic Majesty and the United States of America. They have been sufficiently demonstrated by the results, and I now look with alarm at those which may follow. I must however assure you, sir, that from the accounts which I have received, it is certain that the British boats were the first to attack the American schooner."

These *accounts* which it is believed had never before been disputed and which yet remain to be justly impeached, do not warrant the imputation so often reiterated that the American brig was the aggressor, and it is for the government of Portugal to reconcile the palpable discrepancy between the statements of the Minister of Foreign Affairs of 1843, and the official report of the governor of Fayal of 1844.

This evidence might under the circumstances be regarded as conclusive of the rights of the claimants in this case, but the natural desire which the undersigned feels to vindicate his injured countrymen from flagrant wrong, which his Excellency has thought proper to impute to them, and to place this claim beyond the reach of cavil or sophistry, induces him to call the attention of your Excellency to an extract from another document emanating from an authority no less distinguished than the Marquis de Aguiar, then Minister of Foreign Affairs, and written in obedience to "orders just received from his Royal Highness the Prince Regent of Portugal," addressed to Lord Strangford, Envoy Extraordinary for his Britannic Majesty, bearing date at the "Palace of Rio Janeiro, December 22, 1814." "In complying with the orders just received from his Royal Highness, the Prince Regent of Portugal (his master) the undersigned has the honor of transmitting to his Excellency Lord Strangford, Envoy Extraordinary and Minister Plenipotentiary for his Britannic Majesty, a copy of advices that were received a short time since from the governor of Fayal, communicating the proceedings of a British squadron that had anchored there under the command of R. Lloyd."

"On a perusal of these papers his Excellency will observe the outrageous

manner in which that commander violated the neutrality his royal highness had resolved to maintain during the war that unhappily exists between England and the United States, by audaciously attacking the American privateer General Armstrong in the port of Fayal, and under the guns of the castle, notwithstanding the remonstrance of the governor founded on the laws of nations, and the friendship and alliance that existed between the two sovereigns.

“His Excellency will likewise observe the base attempt of the British commander at the time he commenced the unprovoked attack on the American privateer, to attribute those violent measures to the breaking of the neutrality on the part of the Americans in the first instance, by repelling the British armed barges that were sent for the purpose of reconnoitering that vessel, advocating with the most manifest duplicity that they were consequently the aggressors; but what appears still more surprising, is the arrogance with which the British commander threatened to consider the territory of his royal highness as enemies, should the governor adopt any measures to prevent them from taking possession of the American privateer, which they subsequently plundered and set on fire.”

The undersigned presumes that these despatches which establish so conclusively the facts of the case, must have escaped the observation of his Excellency when he asseverated that the privateer was the *aggressor*, and declared that “the accounts received all agree that the American brig, under the pretext that four boats from the British vessels were approaching her, fired upon them, killing some of the men and wounding others.”

The undersigned cannot, upon any other hypothesis consistent with his respect for his Excellency, account for his attempt to justify as an act of necessary self-defence, the conduct of a British officer, which the Prince Regent of Portugal had upon official advices pronounced as “the base attempt of the British commander, at the time *he commenced the unprovoked attack on the American privateer*, to attribute the breaking of the neutrality on the part of the *Americans* in the first instance in *repelling the British armed barges* that were sent for the purpose of reconnoitering that vessel, advocating with the most *manifest duplicity* that they were consequently the aggressors.”

Without invoking the aid of other evidence which has heretofore been brought to the attention of the Portuguese government in support of this claim, the undersigned flatters himself that he has shown, first, by the official despatches of the governor of Fayal, and, secondly, by the despatch of the Marquis de Aguiar, sanctioned by his royal master, the Prince Regent of Portugal, that his Excellency, Visconde de Castro had wholly misconceived the history of the transactions which gave rise to this claim and which so clearly establish its justice and validity.

The undersigned will now submit a few remarks in regard to the rights of the owners, officers and crew of the American brig General Armstrong to the reparation which they claim, as against the government of Portugal, and in doing so he must be permitted to say that the rights of the claimants, if resisted at all, must be resisted on other grounds than those assumed in the note of his Excellency. The undersigned feels warranted in asserting that the government of the late Prince Regent of Portugal, so far from *disputing*, solemnly and authoritatively *recognized* the rights of the claimants, as will be seen by reference to the despatch of the Marquis de Aguiar, of the 22d of December, 1814. “His royal highness at the same time

that he has directed his minister at the court of London to make the strongest representations before the Prince Regent of the United Kingdom, and to require satisfaction and indemnification not only for his subjects but for the American privateer whose security was guarantied by the safe-guard of a neutral port."

The undersigned maintains that the Portuguese government is committed to the full extent of this recognition, and cannot now impeach it without compromising the good faith of the late sovereign, who, by requiring "satisfaction and indemnification for the American privateer, sought not only to give a practical value to that security which he admitted was guarantied by the safe-guard of a neutral port," but with powers as full and plenary as any which can be claimed for her Majesty's government, he acknowledged both the rights of the claimants and the obligations of the Portuguese government. The acts of one sovereign, solemnly promulgated, and founded upon the highest official evidence, cannot be disregarded at the arbitrary will of a successor, and the claimants in this case are entitled upon the plainest principles of equity and law, to the full benefit of every admission thus made by the late sovereign of Portugal.

His Excellency appears to have attached very great importance to the fact so often reiterated in his despatch that "the first shot came from on board the American brig General Armstrong." If this fact had been admitted as the dying declaration of Captain Reid, or was proved upon every page of the evidence, your Excellency is too well versed in the learning of the law, not to know, that a shot may be fired as well in justifiable defence as in criminal aggression; and this principle seems to have been well understood not only by the Prince Regent and the Marquis de Aguiar, but even by the Governor of Fayal. And had it been admitted by neither, it is too well established by authority, and has been too long sanctioned by the acquiescence of the most enlightened nations to be controverted at this day. In illustration of this view the undersigned invites the attention of your Excellency to the case of the *Twee Gebroedus* cited by Chitty, in his *Law of Nations*—4 Chitty, page 114, American edition. In this case the British ship *L'Espeigh*, lying in the eastern Ems, within the neutral territory of Prussia, sent out boats to capture the vessel *Twee Gebroedus*, which was lying a short distance out at sea. The learned judge, Sir William Scott, who presided in this case, remarked, that it was said that this "ship was in all respects observant of the peace of the neutral territory, that nothing was done by her which could affect the rights of territory or from which any inconvenience could arise to the country within whose limits she was lying; inasmuch as the hostile force which she employed was applied to the captured vessel lying out of the territory. But that is a doctrine that goes a great deal too far. I am of opinion that no use of a neutral territory for the purposes of war, is to be permitted, I do not say for remote uses, such as procuring provisions and refreshments, and acts of that nature, which the law of nations universally tolerates, but that no proximate acts of war are in any manner to be allowed to originate on neutral grounds; and I cannot but think that such an act as this, that a ship should station herself on neutral territory, and send out her boats on a hostile enterprise, is an act much too immediate to be permitted. For supposing that even a direct hostile use should be required to bring it within the prohibition of the law of nations, no body will say that the very act of sending out boats to effect a capture, is not itself an act directly hostile, not complete indeed,

but inchoate and clothed with all the characters of hostility. If this could be defended, it might as well be said that a ship lying in a neutral station might fire shot on a vessel lying out of the neutral territory, the injury in that case would not be consummated nor received on neutral grounds, but no one would say that such an act would not be a hostile act immediately commenced within the neutral territory. And what does it signify to the nature of the act, considered for the present purpose, whether I send out a cannon shot which shall compel the submission of the vessel lying at two miles distance, or whether I send out a boat armed and manned to effect the same thing at the same distance? It is in both cases the direct act of the vessel lying in neutral ground. The act of hostility actually begins in the latter case with the launching and manning and arming the boat that is sent out on such an errand of force."

The failure of the Governor of Fayal to protect the brig General Armstrong, left to her gallant officers and crew no other alternative but to defend themselves, which, upon the clearest and most unquestionable principles of the law of nature, they had the right to do, abandoned as they were to the vengeance of their infuriated assailants. Having done this and no more, it is adding insult to wrong now to charge them with having been the aggressors and violators of the neutrality of Portugal.

In considering the question as to the *extent* of the liability of Portugal, it may well be maintained that it is co-extensive with the security guaranteed by the safeguard of a neutral port," and consequently the government of Portugal must be regarded as responsible to the parties aggrieved for all the damages resulting to them from the violation of such security. It is believed that no question has arisen at any period of this negotiation as to the right of an American vessel to protection in the ports of Portugal. If the official evidence which the undersigned has had the honor to submit can establish any truth, it is manifest that the neutrality of the port of Fayal was flagrantly violated by the British commander, R. Lloyd, and that the brig General Armstrong was wantonly insulted, assailed and destroyed by his orders, within "a stone's throw of the castle," and without one effort to repel it on the part of the Portuguese authorities.

It is laid down by Bynkershoek in his "Treatise on the Law of War," American edition, chapter viii, page 58, that "he who commits hostilities on the territory of a friend to both parties makes war upon the sovereign who governs there, and who, by his laws, coerces every violence by whomsoever it may be committed." The same author, page 60, declares that "those articles of treaties between France and the States-general only stipulate that the sovereign of the port, bay or river in which a prize shall be made from a friend, shall use his utmost endeavors that the captured property be fairly and justly restored. If it be the duty of the sovereign to use his utmost endeavors to effect that purpose, it follows that he must do it at his own expense, nay, by going to war, if other means are not sufficient. Such is the law which is observed among all nations, and there is no other reason for it than that it is not lawful to commit violence within the territory of another; and that ports, bays and rivers are also within the territory of the sovereign of the country." This principle of public law, sanctioned by the concurrent authority of other eminent writers, is too well established to admit of dispute. It was recognized by the government of the undersigned in the very infancy of its national existence, and enforced at the hazard of offence, against its late friend and ally, and in favor of its late

enemy, in a case where it was contended that the capture was not made within the territory of the United States. The case to which the undersigned refers was that of the British ship *Grangé*, captured by the French frigate *L'Ambuscadé* in 1792, in the waters of the bay of Delaware. This ship was taken into the port of Philadelphia to which she was bound, and although it was maintained by the French minister that the bay of Delaware was an open sea and not subject to the exclusive jurisdiction of the United States, that government thought otherwise and ordered the ship to be restored. Many other cases, affirming the same principle and sanctioned by the principal governments of Europe, might be adduced, but the rule seems to be so well settled as to render it unnecessary. The undersigned admits that the authority and the case to which he has referred relate more particularly to captures, but the principle asserted in both applies equally to the case of the brig *General Armstrong*, which was destroyed within the acknowledged territory of Portugal.

The right of protection, now universally conceded both to the vessels of neutrals in the ports of belligerents and to those of belligerents in the ports of neutrals, owes its origin mainly to the humane desire of enlightened Christian nations to restrict belligerent powers in the exercise of the rights of war to the territory of each other, or to territory which belongs to no one—as the open sea—and thus to mitigate to that extent the evils and calamities of war.

If the right of protection, asserted in behalf of the American privateer, did not carry with it a correlative obligation on the part of Portugal either to guarantee that protection by repelling any violation of it, or to indemnify the parties aggrieved for any damages which they may have sustained by the failure of the authorities to do so, then the “security guaranteed by the safeguard of a neutral port is not only a delusion and a mockery, but may become the means of entrapping the innocent and unsuspecting mariner, and of making him the more easy and certain prey of any insolent assailant.

His excellency has thought proper to say, that “notwithstanding this, and although there was not on the island of Fayal more than one hundred infantry and eight artillery soldiers, and the artillery in the castle of Santa Cruz, as well as in the other forts, was in a ruined state, a circumstance which rendered it absolutely impossible to avoid (*evitar*) hostilities by force, yet the military governor was not prevented from employing every means of persuasion to obtain that end, in a long and energetic correspondence which he carried on with the principal commander of the British vessels, as was testified by Mr. Dabney, consul of the United States at Fayal, in an official communication to his government of all the facts under date of the 25th of October, 1814.”

The undersigned must be permitted to say that this point revolves itself into a plea of imbecility, which stultifies the government of Portugal, and is altogether incompatible with the obligations which necessarily attach to its separate and independent nationality. If the facts stated be true, and Portugal could be considered as absolved from its just and *immediate* liability to the injured claimants, that consideration so far from invalidating the demand for redress, would greatly strengthen the obligation of the government to insist upon ample remuneration from *Great Britain*. The claim of the parties in this case is against the government of Portugal, and the United States cannot enter upon any inquiry as to the means of the

former to obtain satisfaction from the British government, by a resort to the ulterior measures required by the law of nations. It may however be remarked, that in the vindication of a right so universally tolerated, Portugal might well claim the countenance and aid of the great family of civilized nations.

In relation to the conduct of the governor of Fayal, his excellency was content to offer a very brief defence. He says, "The accusation against the governor of Fayal, of not having consented to the requisition of said consul to permit the embarkation of a number of American citizens to augment the number of the defenders, cannot be sustained from the moment it is considered that the commander of the British vessels might with just cause have accused him of partiality, as he had also refused him the assistance asked to apprehend (*apprehender*) the American brig, although she was the aggressor."

The undersigned by no means admits that the conduct of the governor of Fayal was characterized by the spirit of impartiality which became a neutral, and still less that he was justified in folding his arms and tamely submitting, as he did, to the unprovoked outrage committed under the guns of the castle, in insolent defiance of his authority. This officer was himself an eye-witness to the brilliant achievement won by the valor and intrepidity of a few brave men, and unfortunately for him, the same report in which he bears equivocal testimony to their heroism and daring, records his own submission to the insult, outrage and contempt of a haughty British officer. Besides the infantry and artillery-men in the service of the military governor, the officers and crew of the General Armstrong, with all the arms and ammunition on board the brig, and the thirty American seamen whom he refused permission to aid in defending the privateer, were unquestionably at his command; and it cannot be presumed that his excellency intended to imply that in an emergency like that the military governor of a distant island had not the power to call out the entire effective force of the island, to defend the territory of his sovereign from insult and aggression. These means, employed with half the spirit which had enabled about ninety men twice to repulse and beat back with great slaughter their vindictive assailants, with a force more than quadruple their own, might have commanded respect for a neutral port, and saved in all probability the brig from plunder and destruction. Such an effort was demanded by the highest sentiments of duty to the sovereign of Portugal, no less than by a just regard to the clear and indisputable rights of the brig General Armstrong. The utter failure of the governor to offer any resistance is admitted on all hands, and it is in the highest degree probable that his "means of persuasion," which betrayed either his weakness or servility, tended far more to invite than to prevent the hostilities which followed.

Had this governor met the insolent British officer in the same spirit of energy and promptitude which distinguished the governor of Bergen in 1666, in firing upon a squadron under the command of an English admiral, who attacked the Dutch East India fleet which, to avoid him, put into the territory of Norway, this outrage might have been prevented. At any rate your excellency must see that if the excuse thus set up for the conduct of the governor of Fayal be admitted, in derogation of the rights of the claimants, the "security guaranteed by the safeguard of a neutral port" is left to depend, not upon the well settled principles of public law, which

alone could give any practical value to it, but is left to the caprice, the partiality, or the weakness of a provincial governor.

This the undersigned is not prepared to admit for an instant. Such a principle, if tolerated, would furnish a cover for the grossest partiality, and give impunity to enormities which other States would be compelled to redress, by making the territories of such neutrals the theatre of hostilities and war, contrary to the very principles laid down in the law of nations.

The conduct of the Governor of Fayal, is considered equally reprehensible upon another ground. Not content with refusing any assistance to the American brig, though "perfectly aware that force should be repelled by force," he abandoned his "desires to comply with (his) duty," and arbitrarily refused to permit the consul of the United States to send thirty *American* seamen then on shore, to aid their countrymen; and in this compromised the very neutrality which he sacrificed his duty and character as a military governor to preserve. But his subsequent conduct equally subjects this officer to the charge either of unwarrantable partiality or servility to the British commander. When it became manifest that no protection would be given or permitted by the governor, and when it was apparent that further resistance would be unavailing, Captain Reid abandoned the brig General Armstrong, and with his crew went on shore. This governor following still his peaceful instincts, ordered his soldiers to seize and disarm those whom he was bound by every obligation of duty and honor to protect, and to take their arms to the castle.

To justify this conduct he professes to have given "orders respecting the English seamen and soldiers who might come on shore," one of whom being found with a pistol, he had it taken from him, but instead of ordering *it to be sent to the castle*, it was politely delivered to the very British commander who had been the author of the whole outrage. It is true that the governor says he "made known to the chief of the British forces that it would be proper for him to take care to let as few of his people as possible come ashore, and that positively none would be allowed to land armed."

But the sequel abundantly proves that the "chief of the British forces" knew his man, and needed no armed men on shore to execute his bidding, except those which this "military governor" was found ready to furnish in obedience to his requisition.

The American sailors, disarmed and cruelly abandoned to the fury of their pursuers, rendered as they were still more vindictive by the heavy losses which their folly and madness had cost them, retired to the mountains of the island for that security which this governor would neither afford them by the arms of his sovereign, nor permit them to defend with their own. And here it might have been expected that this wanton proceeding would have terminated, at least so far as the governor of Fayal was concerned; but the following extract from the official report of John B. Dabney, esq., American consul at Fayal, to the Secretary of State of the United States, under date of the 5th October, 1814, adds another incident to this transaction, and fixes upon this governor an act of the most palpable partiality or unmitigated servility. The extract is as follows: "Since this affair the commander, Lloyd, threatened to send on shore an armed force and arrest the privateer's crew, saying that there were many Englishmen among them; and our poor fellows, afraid of his vengeance, have fled to the mountains several times, and have been harassed

extremely: At length Captain Lloyd, fearful of losing more men if he put this threat into execution, adopted this stratagem: he addressed an official letter to the governor, stating that in the American crew were two men who deserted from his squadron in America, and as they were guilty of high treason he required them to be found and given up. Accordingly a force was sent into the country, and the American seamen were arrested and brought to town, and as they could not designate the said pretended deserters, all the seamen here passed an examination of the British officers, but no such persons were to be found among them. I was requested by the governor and British consul to attend this humiliating examination, as was also Captain Reid, but we declined to sanction by our presence any such proceeding."

This is the official statement of a public officer, well known to the authorities and inhabitants of Fayal as a gentleman distinguished for his virtues and his honor, and whose veracity defies impeachment. His simple narrative carries the impress of truth upon its face; and the question may here be propounded, why was this part of the conduct of the governor of Fayal carefully excluded from the minute and elaborate report of this officer to his government, which purported to furnish every incident up to the sailing of the British squadron? The motive for its suppression is obvious, and that part of his conduct remains to be justified, if indeed it can furnish grounds for defence or palliation.

If the undersigned in reviewing this unpleasant transaction has sometimes spoken freely of the parties concerned in it, it was because he felt strongly for those of his countrymen whose rights were so grossly violated in a neutral port, and who, after one of the most spirited and brilliant defences to be found in the annals of naval warfare, were disarmed by the very man who owed them protection, and who subsequently dragged them like culprits from the mountains in which they sought a security which he denied them, and brought them before the officers of the British squadron, and subjected them to a mortifying and humiliating examination. Had the governor communicated this part of his conduct to his royal master, instead of the qualified disapproval of "the censurable moderation of the conduct of the governor during these outrages," expressed by the Prince Regent of Portugal, there can be but little doubt that his Royal Highness would "have immediately caused a process to have been instituted for the punishment of that officer."

The undersigned considers it his duty to inquire whether the claim which was so promptly asserted by the Prince Regent of Portugal against Great Britain, in behalf of the privateer, has been abandoned, and if so, at what time? It might well be questioned whether the grounds assumed by his Excellency in relation to this claim would have warranted an honorable demand for the apology and indemnity which his Britannic Majesty made to the sovereign and subjects of Portugal; and the undersigned cannot but suppose that the Portuguese government, in the prosecution of that branch of the claim, insisted upon the fact so conclusively established in this, that the British squadron was the aggressor and violator of the neutrality of Portugal.

If this be so, it would be difficult to imagine on what grounds the claim in behalf of the privateer, which grew out of the same transaction, has been abandoned by the Portuguese government. The acceptance of the apology to the Sovereign and of the indemnity to the inhabitants of Fayal, made by

his Britannic Majesty as a full and complete satisfaction for the conduct of the British squadron, was inconsistent with the just rights of the claimants in this case, as it was with the demand made in their behalf by the Prince Regent of Portugal. The evidence which justified the demand and acceptance of the one, equally established the validity of the other.

The unsustained statement of the British officer, that the Americans violated the neutrality of the port of Fayal by an unprovoked aggression upon his forces, is so fully disproved by all the evidence, and so directly discredited by the subsequent conduct of his own government in making the apology and indemnity which it did, that it cannot justify any such discrimination against the American privateer. This attempt of the British commander to excuse the violence and turpitude of his own conduct has been faithfully characterized by the consul of the United States, in his official report to his own government under date of the 5th October, 1814:

"In face of the testimony of all Fayal, and a number of respectable strangers who happened to be in this place at the moment, the British commander endeavors to throw the odium of the transaction on the American Captain Reid, alleging that he sent the boats merely to reconnoitre the brig, and without any hostile intentions. The pilots of the port had informed them of the privateer the moment they entered the port. To reconnoitre an enemy's vessel in a friendly port, at night, with four boats, is certainly a strange proceeding! The fact is they expected, as the brig was warping in, that the Americans would not be prepared to receive them, and they had hopes of carrying her by a *coup-de-main*. If anything could add to the baseness of this transaction on the part of the British commander, it is his want of candor openly and boldly to avow the facts. In vain can he expect by such subterfuge to shield himself from the indignation of the world, and the merited resentment of his own government and nation, for thus trampling on the sovereignty of their most ancient ally, and for the wanton sacrifice of British lives."

Thus stands the claim of the owners, officers and crew of the American privateer, General Armstrong, which has been the subject of a fruitless negotiation and harassing delay for more than thirty years. The undersigned having (as he trusts) succeeded in vindicating his injured countrymen from the aspersion sought to be cast upon them, of having been the aggressors, and by a faithful recurrence to the unvarying history of the transaction fully established the justice and validity of the claim, it only remains for him to submit it *once more* for the definitive determination of her Majesty's government. Personally the undersigned would be much gratified to see this claim brought to an amicable and satisfactory issue, but in any event, unless further negotiation could promise other results than further delay, he must insist upon being informed of the final decision of her Majesty's government, at least as early as the first day of October next; if not, the President of the United States will be justified in regarding further delay as a denial of justice, and will be left to adopt such steps as the rights of his injured fellow-citizens may require.

In intimate connexion with this subject the undersigned will, at an early day, call the attention of your Excellency to other claims in behalf of sundry citizens of the United States which remain to be adjusted, and he will then have the honor of referring with more particularity to the views and expectations of the President of the United States in relation to these subjects. At present the undersigned will only add that the government of the United

States entertains no doubt about the justice and validity of these claims. The President of the United States sincerely desires to cultivate peace with every nation and people; but he will never compromise the dignity of the Republic, nor abandon the just rights of his fellow-citizens to attain any end. Animated by a scrupulous regard to the rights of others, he will proceed upon the principle often avowed by his government, "to make no demand not founded in justice, and to submit to no wrong."

The undersigned renews to your Excellency the assurance of his distinguished consideration and esteem, and has the honor to be, your obedient servant,

GEO. W. HOPKINS.

His Excellency the COUNT OF TOJAL,
Minister of State for the Office of Foreign Affairs, &c.

I.

[Translation.]

Count Tojal to Mr. Hopkins.

DEPARTMENT OF FOREIGN AFFAIRS,
September 29, 1849.

The undersigned, minister and Secretary of State of foreign affairs, had the honor to receive the note addressed to him on the 23th of June last, by Mr. George Washington Hopkins, Chargé d'Affaires of the United States of America, insisting on the claim made on her Majesty's government by Mr. Edward Kavanagh, in his note of the 17th of February, 1837, in which he demanded indemnification for the losses and damages sustained by the owners of the American privateer General Armstrong, armed with seven pieces of cannon and manned by ninety men, under the command of Captain Samuel Reid, which was burnt within the port of Fayal, on the 27th of September, 1814, by order of Commodore Robert Lloyd, commander of a British squadron, which entered that port on the preceding day, composed of the seventy-four gun-ship Plantagenet, the frigate Rota, of thirty-eight guns, and the Carnation.

Among the censures which Mr. Hopkins endeavored to cast on the note addressed by the Visconde de Castro, the predecessor of the undersigned, on the 3d of August, 1843, to General Barrow, the Chargé d'Affaires of the United States of America near this court, he endeavors to place in strong relief the alleged unreasonableness of the surprise evinced by the Visconde de Castro in his said note, on the part of her Majesty's government, at seeing this claim brought forward by the American government after a silence of so many years. The privateer, General Armstrong, was burnt on the 27th of September, 1814, after an obstinate combat with the forces of the above mentioned British squadron, on that and the preceding days. On the 3d day of the same month and year the American consul at Fayal delivered to the governor of that place a copy of the protest against the commander of the said squadron and against his Majesty's government; the consul at the same time expressing his hope that this claim would receive

attention whenever the American government should make a regular representation of it to the government of Portugal.

Twenty-three years thereafter passed by in perfect silence; and it was not until the 17th of February, 1837, that a note appeared from Mr. Edward Kavanagh, claiming, *for the first time*, in the name of his government, indemnification for the losses sustained by the owners, officers and crew of the said privateer.

After such a lapse of time there were undeniable grounds for surprise at the appearance of such a claim, although there would have been nothing strange in a delay such as would have been necessary to collect the information requisite for answering the claim with perfect knowledge of the case.

Mr. Hopkins attributes the whole delay, in the presentation of this claim, to the forbearance of his government, in reason, first, of its desire to await the result of the demand, honorably and promptly made by his Majesty's government, upon the British government for satisfaction on account of the outrage committed by the British squadron, and indemnification for the injuries thereby occasioned to the American privateer; and, secondly, in consideration, by the government of the United States, of the separation of Brazil from this kingdom, and of the civil wars which ensued for many years.

It will easily be seen how specious these reasons are, on observing, with regard to the first, that it is well known that the British government had already, in 1817, disapproved of the conduct of Commodore Lloyd, thereby giving satisfaction to his Majesty's government; and that it had in March, 1818, made compensation for the losses occasioned to the inhabitants of Fayal by the artillery of the British forces, while absolutely refusing indemnification for the loss of the American privateer, General Armstrong, on the grounds of her having been the first aggressor, and therefore the cause of her own destruction. Thus in 1818 every motive had ended on the part of the American government for expecting that the British government would accede to the claim of his Majesty's government for indemnification of the loss of the said privateer.

There is moreover another and a stronger reason, for which the American government could not have been ignorant, that it could never obtain from the British government indemnification for this or for any other of the captures and irregularities of various kinds, committed during that war, contrary to the laws and usages established by civilized nations in time of war; as it is notorious that in the conferences held in the same year, 1814, between the British and American plenipotentiaries at the city of Ghent, the Americans never could obtain from the British any admission to discussion of claims for indemnification on such ground, and those claims were abandoned by the American plenipotentiaries, on concluding and signing the peace, in the said city of Ghent, on the 24th of December, 1814.

This may be, in fact, considered as the true motive of the silence maintained for twenty-three years, with respect to this claim by the government of the United States of America, impelled by a noble feeling of honor, to refrain from exacting from a less powerful and neutral nation indemnification for the losses sustained within the territory of the latter, as it had desisted from demanding such indemnification from the nation with which it was at war, and from which it received those injuries during that war.

Not less specious is the alleged consideration, for the situation of this

kingdom, in consequence of the separation of Brazil, and the civil wars which have since taken place in this country.

The difficulties of Brazil were terminated by the treaty of 1825, twelve years before the advancement of this claim, and the civil wars which ensued in that year continued at short intervals, and were in February, 1837, in their utmost violence when the said claim was presented, preceded by others more important and urgent.

The Visconde de Castro in his note of August 3, 1843, placed this occurrence entirely in its true light, showing that the aggression proceeded from the privateer General Armstrong, which fired the first gun on the boat of the British squadron as it first approached her.

But, as Mr. Hopkins acknowledges that this is the cardinal point which would destroy the alleged justice of his claim, he therefore takes great pains in various ways to prove that the British boats which approached the privateer had been the aggressors.

He presents as proof of this the assertion of the Governor of Fayal, in his despatches to his Majesty's government, relating the outrage which had been there committed by the violation of the territory in that conflict, and in his correspondence with Commodore Lloyd.

It is to be observed that the governor wrote under the influence of the feelings excited by the enormity of such an outrage, and that his whole object in the said correspondence with that commodore, was to prevail upon him to desist from further hostilities.

It is to be observed, moreover, that the governor was not himself present at the commencement of the hostilities; for as may be seen by the said despatches, he was informed of them only by the first letter, written to him by the American consul, and it was in the castle that he learned that a barge had been sent to search the privateer, and afterwards three others had followed it armed, and that in consequence of the privateers not choosing to allow the said barges to approach her, a fire had been opened on both sides.

The note addressed by the Marquis de Aguiar to Lord Strangford upon this occurrence, and which is cited by Mr. Hopkins in favor of his opinion, has not, nor can it really have, any greater force than the despatch from the Governor of Fayal to which it refers, and on which it is entirely founded.

Captain Reid, the commander of the American privateer, is the first to declare, in the protest signed by him and the officers of the crew of that privateer under oath at Fayal, that on the approach of the four barges with armed men, as they would not comply with the warning which he gave them to retire, he had given orders to fire on them, in consequence of which some of their men had been killed and wounded.

Entirely conformable with this declaration, is the account given by John Dabney, the consul of the United States in the Island of Fayal, to his government on the 25th of October, 1814.

It is therefore clearly and irrefragably proved by these documents, that the first fire came from the privateer, agreeably to the most positive orders of her commander.

These declarations, that the privateer was the first to fire, are moreover confirmed by the account given to the British admiralty by Commodore Lloyd on the 1st of October, 1814.

It is this latter account agrees moreover with the despatch from the Gov-

error of Fayal, to the effect that the first British barge which approached the American privateer in order to learn what vessel she *was, went unarmed*.

It was upon this unarmed barge that the privateer fired the first gun, as affirmed by Commodore Lloyd, and supported by the deposition, of which a copy was annexed, of Robert Fausset, a lieutenant in the British navy, who commanded the barge, made under oath before the British consul at Fayal, on the 27th of September, 1814.

It is evident from this deposition, which is also confirmed under oath by the master and one seaman of that barge, that when the said lieutenant approached the privateer, the Americans called out to him to retire; and that while he was actually employed in turning about, they fired upon the barge, by which two men were killed and seven were wounded, two of the latter mortally; that the lieutenant, nevertheless, repeatedly called out to them not to kill them; that he surrendered and asked for quarter; the said lieutenant moreover declaring, that he would not make the least resistance, nor could he have done so, being entirely unarmed.

It is therefore indubitable, that the privateer not only was the first to fire, but that she fired upon an unarmed British barge; a circumstance rendering her conduct more aggravating, so that it cannot be regarded otherwise than as a gratuitous violation on her part, of the neutrality of that port, belonging to the Portuguese crown; and that this was the originating cause, rendering her responsible also for the violation by Commodore Lloyd, committed in retaliation for the hostilities against the crew of his boat, as well as for all the deaths and damages occasioned by that unfortunate conflict.

This serves to show the incorrectness of the statement, that the barges which first approached the privateer were four in number and all armed; whereas the first was alone and unarmed, and consequently the fire made upon her was by no means provoked, and especially not made in self-defence as it is alleged.

The mere approach of armed boats by no means authorized the fire to be made in self-defence, as there was no attack; and there was certainly no attack, for we have already seen that the captain of the privateer himself expressly declared in his protest that he ordered fire to be made upon the barges, because they had disregarded his warning to retire.

It is moreover a well established principle, that even legitimate defence must always be subordinate to the rights and duties of him who finds himself obliged to have recourse to it, and that whenever it oversteps these limits it ceases to be self defence and becomes a real attack, which provokes and justifies the employment of the same measures by the party which was in the beginning the aggressor.

From what is here said, it is clearly demonstrated that there are no grounds for the claim of the government of the United States against Portugal for indemnification on account of the destruction of their privateer General Armstrong, whose commander and crew, having been the first to violate the neutrality of the port of Fayal by their killing and wounding the greater part of the crew of an unarmed British barge, drew upon themselves the retaliation from which they then suffered.

Under these circumstances, if the government of Portugal at that period had taken this case into just and due consideration, and had been in possession of the information which the advancement of this claim by the government of the United States has obliged it to obtain, it might on its

part, with full reason, have demanded from the government of the United States satisfaction and reparation for the outrage received at the same time, when it applied to the British government for the same object.

Notwithstanding, that the plan which Mr. Hopkins had traced out for himself in his note, with regard to this claim, has been completely destroyed, the undersigned will proceed to answer certain arguments which that gentleman had used in support of the said plan.

The principle established by Bynkerschock, in the eighth chapter of his treatise de *Rebusbellis*, cited by Mr. Hopkins, and from which he endeavoured to deduce the obligation on the part of Portugal, to indemnify the American privateer, viz: "That a sovereign, in whose ports a capture was made from any friendly power, should endeavor by every means, and at his own cost, to have restored what was taken, even to the extent of making war for that purpose, if it should be absolutely necessary," is by no means so general as to be without exceptions; and above all it is not subject to the principle of all exceptions, because, as the right of a nation to provide for its own safety is incontestible, for that very reason it can never be obliged to engage in a war which would inevitably ruin it. The abandonment already mentioned by the American plenipotentiaries, during the conferences at Ghent for the conclusion of the treaty of December 24, 1814, of the indemnification which they endeavored to obtain from the British government for the captures and irregularities committed in contravention of the laws of war and the usages of civilized nations by the British forces before, as well as after the declaration of that war, and abandonment sanctioned by the ratification which the government of the United States gave to that treaty, was sufficient of itself alone to exclude every right which that government could pretend to advance against Portugal for indemnification on account of the destruction of the said privateer.

It was in reality neither decorous nor conformable with any principle of justice, that a belligerent nation should demand from another nation, less powerful and neutral, indemnification in one of the very cases, the abandonment of which by the first mentioned nation was made a necessary or tacit condition of the conclusion of a treaty of peace with the other belligerent nation, from whose forces it received the injury committed, in the territory of the neutral. But setting aside this reason, the force of which would render any others dispensable, it is to be observed that according to the remark of Kluber, in his Treatise on the Law of Nations, that the laws of neutrality prohibit the neutral State from *voluntarily allowing* one of the belligerent parties to commit acts of hostility in its neutral territory, whether maritime or inland.

The constant and honorable endeavors of the governor of Fayal, from the beginning of that conflict until its end, to induce Commodore Lloyd to desist from the retaliation which he attempted and effected, are incontestable, notwithstanding the low estimate placed on them by Mr. Hopkins.

The consul of the United States at Fayal, himself an ocular witness of those endeavours, does more justice to them in the account which he addressed to his government. "The governor," says he, "indignant at these proceedings, and finding himself with forces entirely too few to resist so great a force, adopted the expedient of complaining in terms respectful but strong; the letter addressed by him to Commodore Lloyd had no other effect than to produce an answer of a menacing and insulting character."

It is thus clearly proved that the endeavors of the same governor, in favor of the American privateer, were carried as far as possible ; as far at least as the laws of neutrality obliged him ; and it cannot therefore be said with truth that he *voluntarily permitted* the destruction of that privateer.

No one can be answerable for what results from causes superior to his own force, because no one can be required to do what is impossible ; and for this reason the codes of civilized nations release contracting parties from every clause of their contract which they may have been prevented, by irresistible force, from fulfilling. The imputation of an omission evidently supposes two things : first, that there were forces and means for acting ; second, and that use might have been made of those means without injury to any other indispensable duty, or without bringing any considerable evil on the party on which no obligation rested to expose itself to such evil.

These incontestable principles afford the strongest defence for the conduct of the Governor of Fayal, and free him, as well as the Portuguese government, from all imputation.

The forces at the disposition of that governor were reduced, as already said by the Visconde de Castro, in his above-mentioned note, to one hundred infantry soldiers and eight artillery men ; the few guns in the castle of Santa Cruz and the two other forts in the island being ruined, which rendered it impossible to prevent by force the hostilities committed by the squadron of Commodore Lloyd, consisting, as already said, of a seventy-four gun ship, a thirty-eight gun frigate and a brig.

This impossibility seems to have been doubted by Mr. Hopkins, as he affirms in his note that the governor, by uniting with his forces above enumerated the ninety Americans of the privateer and thirty others then in the island, with the other forces, these might have imposed respect upon the commander of the British squadron, and have thus in all probability prevented the privateer from being captured or burnt.

Leaving aside the question whether the governor could legally, without risking the neutrality of the port of Fayal, unite the forces under his own command for defence with the American belligerents, it is sufficient to say, as regards the crew of the privateer, that no one can doubt their having acted valiantly against the attack of the British barges ; but when the brig *Carnation* laid herself alongside, and began her fire on the privateer, the captain of the latter, as he himself declares in his protest, finding all further resistance useless, judged it prudent to abandon her, after having partially destroyed her.

It is thus shown that this crew, united with the force at the disposition of the governor, could not have resisted a landing of the whole force of the British squadron. As regards the other forces of the island, they consisted of militia or armed peasants, whom it would not be possible to collect and provide with munitions in one day, as would have been necessary, and it is well known that irregular troops seldom resist well-disciplined troops of the line.

It has already been seen that the American consul at Fayal, who had reason to be better informed than Mr. Hopkins, acknowledged that the governor could not have resisted the great force of the British squadron.

The commander of the privateer himself, who had been a short time in the island, and was also in consequence better informed, was equally aware

of the entire impossibility that the governor could have defended it against any attack from the squadron. This conviction on his part is proved by the declaration of the consul of the United States, John Dabney, in the account above-mentioned, given by him to his government, that the commander of the privateer, after the arrival of the British squadron, doubting that he should be able to escape if he sailed, judged it most prudent to remain at anchor, trusting to the *justice and good faith* of the British captains. He certainly would not have depended for his safety on this justice and good faith, had he not been perfectly convinced that it was entirely impossible for the governor to defend him.

Another proof of this is to be found in the protest of the commander of the privateer, which forms and ought to be the real base of the claim, because he does not there protest on account of his not having been defended, but from inability—that is to say from want of means—from impossibility to defend him in that neutral port. It was a protest, truly singular, against an impossibility, which can oblige no one farther than to prove it in an indubitable manner.

It should also not be lost sight of that the governor, together with his duty to defend the neutrality of the port as far as the means at his disposition would allow, was bound by another obligation, no less sacred, not to sacrifice the lives and property of the people in the capital of the island; and being fully convinced that he could not save the privateer from the overpowering force of Commodore Lloyd by his own forces, he should not have made any efforts to do so, as the necessary consequence would have been a bombardment from the British squadron, which would have reduced that capital to ashes in a few hours.

Mr. Hopkins, agreeably to the system pursued in his note of always giving great force to everything which might seem conducive to justify his claim and to lower the governor, presents in the worst light two very simple acts on his part. The first is his having caused the crew of the privateer to be disarmed, upon their landing, after abandoning her. No one can doubt that the governments of neutral nations are allowed, as they always do, to disarm any belligerent force which enters the neutral territory when pursued by an enemy. The second is the examination afterwards made of the crew of the privateer, in order to see whether there were among them (and there were not) two British deserters, claimed by Commodore Lloyd. This act was obligatory on the governor in consequence of the stipulation between Portugal and Great Britain for the mutual delivery of deserters.

It is well known, that the British government claimed the right to take from American vessels, such British seamen as might be found in them, refusing, as it still does, to consider as an American any British subjects established in the United States, though they should be considered as citizens of those States according to their constitution: founding this pretension on the maxim, regarded as constitutional in England, that no Englishman can be allowed to throw off his character of a subject of the British crown, in order to enter the service of a foreign power.

This claim, which was one of the causes of the war, was left standing by the conclusion of the peace of 1814, without its being decided; and the undersigned in consequence sees no reason for any observation respecting the examination of the crew of the privateer, made as above mentioned.

The conduct of the old Governor of Fayal, Elias Jose Ribeiro, is thus

fully justified, against the unfounded charges of Mr. Hopkins of partiality, cowardice and servility.

It is likewise clearly proved, that the government of the United States has not the slightest right to demand indemnification for the destruction of the American privateer General Armstrong, from her Majesty's government, which decidedly refuses to satisfy a claim so destitute of foundation. This government has, on the contrary, a better right to demand satisfaction from the United States, on account of the flagrant violation of the neutrality of the port of Fayal, caused by the conduct of the commander of the said privateer, in beginning the hostilities, by killing and wounding the crew of an unarmed barge belonging to the British squadron, without any previous attack, or even provocation from the latter.

The undersigned has the honor to renew to Mr. George Washington Hopkins the assurances of his consideration.

CONDE DE TOJAL.

To G. W. HOPKINS, Esq.,

Chargé d'Affaires of the United States at Lisbon.

K.

Mr. J. B. Clay to Count Tojal.

LEGATION OF THE UNITED STATES,
Lisbon, November 2, 1849.

SIR: The undersigned, Chargé d'Affaires of the United States of America near the government of her Most Faithful Majesty, has had the honor to peruse with great attention and care, the two despatches addressed by your Excellency to his predecessor, Mr. Hopkins, the first under date the 29th September, 1849, relating to and rejecting on the part of her Majesty's government the claim of the owners, officers and crew of the American privateer General Armstrong; and the second, under date the 17th October, 1849, in reply to the despatches of Mr. Hopkins, respecting the various claims therein mentioned. The nature of these despatches has inspired the undersigned with a sentiment of profound surprise and regret; because he is well aware that their character is wholly unexpected by his government, and that they are calculated to produce any thing but satisfaction.

Awaiting the instructions, which he will doubtless in due time receive from his government respecting them, the undersigned would respectfully, but earnestly, for the sake of the good understanding which has so long existed between the two countries, urge upon her Majesty's government, to reconsider the determination to reject the claim of the said owners, officers and crew of the privateer General Armstrong. The undersigned feels that, in thus urging a reconsideration of this claim, it is due to the respect which he owes to her Majesty's government to give the reasons by which he is actuated. This he will now proceed to do as succinctly as possible, and at the same time to answer the arguments set forth in the said despatch of your Excellency, of the 29th September last.

In denying indemnity upon this claim, your Excellency, on the part of the government of her Majesty, relies upon the following points set forth in said despatch:

1. Upon an assumed abandonment of the claim, evidenced by an asserted

lapse of twenty-three years, before it was presented to her Majesty's government.

2. Upon the assertion that the government of the United States, had, in the conferences preceding the Treaty of Ghent of 1814, between her and the government of Great Britain, abandoned all claim for indemnity in this case against Great Britain, and consequently against Portugal.

3. That the privateer General Armstrong was the aggressor in the conflict which resulted in her destruction.

4. That the Governor of Fayal afforded all the protection of which he was capable to the privateer.

5. That it was not the duty of Portugal to protect the neutrality of her port of Fayal farther than she did, because of her weakness.

Upon the first point your Excellency repeats the allegation, "that twenty-three years passed in perfect silence, and only on the 17th of February, 1837, appears a note of Mr. Edward Kavanagh, *claiming for the first time*, in the name of his government, indemnity for the losses suffered by the owners, officers and crew of the said privateer."

After making this allegation, your excellency is pleased to express surprise at the appearance of the claim, and to characterize as *specious* the reasons advanced by Mr. Hopkins, for its not having been more rigorously presented on the part of the government of the United States.

The undersigned does not think that his predecessor, Mr. Hopkins, in the despatch alluded to, laid himself open in the slightest degree to that imputation, and he knows too well the courtesy which should always be observed in the intercourse between the representatives of two sovereign States, to allow himself to retort such a term upon any argument which your excellency may be pleased to make.

Had your excellency examined fully the history of this claim, the undersigned believes that the above quoted allegation would never have been made, because it would have been found that the claim was presented *for the first time* long anterior to the date of the despatch of Mr. Kavanagh in 1837. Whatever may have been the language used by that gentleman, it is very certain that it was formerly submitted for liquidation to the Portuguese government as early as the 1st of January, 1815, by Mr. Sumter, the minister of the United States, under the sanction and approval of Mr. Monroe, the Secretary of State of the United States. At that time the seat of the Portuguese government was at Rio de Janeiro, and it is presumed that all the archives of this legation were transferred to that place, where they have since remained in charge of the American legation, accredited to the government of Brazil. What further correspondence, if any, took place upon this subject, whilst Portugal and Brazil were united, the undersigned is not informed; but he is warranted to assert, upon the authority of authentic documents now before him, that the demand for indemnification, on account of the destruction of the privateer General Armstrong, was made by the then sovereign of Portugal against his Britannic Majesty prior to the 22d day of December, 1814, and that on the said 1st day of January, 1815, indemnification was duly claimed by the government of the United States of America from the government of Portugal.

This being a fact which the undersigned does not think your excellency will for a moment attempt to controvert, and which, although before called to your excellency's attention, he is forced to believe must wholly have

escaped notice or recollection, he may well express his surprise and astonishment at the assertion, "*that the claim was presented for the first time by the note of Mr. Kavanagh of the 17th of February, 1837, as well as at the manner in which the reasons of Mr. Hopkins, so well sustained by the facts, have been considered.* The argument, then, based upon an assumed abandonment on account of lapse of time before the presentment of the claim, falls to the ground.

Your excellency next goes on to assert that indemnity on account of this claim *against the British government*, was abandoned by the American commissioners in the conferences which preceded the treaty of Ghent in 1814; and your excellency is pleased to be somewhat sarcastic upon "*the point of honor*" which urged the government of the United States not to press upon Portugal for indemnification on account of this claim, during the convulsions which agitated her pending and after the separation of Brazil from her, attributing the forbearance of the United States to the *asserted* fact, that she had desisted from demanding such indemnities from Great Britain, and had made a *merit of doing so to conclude and sign the peace of Ghent.*

The undersigned looks upon the shape which the negotiations of the United States with Portugal are assuming, as far too serious to allow him to reply to such attempted sarcasms. He will attend more to the force of his arguments. How your excellency has contrived to bring into the discussion of this claim the conferences which preceded the treaty of Ghent, the undersigned is at a loss to understand. The government of the United States never asserted against the British government a claim for indemnification on account of the destruction of the privateer General Armstrong; and no mention of any sort is to be found of such a claim or of any similar one in the conferences preceding the treaty of Ghent. It is true that it was proposed on the part of the American commissioners, "*that indemnity shall be made by his Britannic Majesty to the citizens of the United States, for all losses and damages sustained by them during the late war between Great Britain and France, and prior to the commencement of the present war, by reason of irregular captures, seizures or condemnations of vessels and other property, under color of authority contrary to the known and established rules of the law of nations.*"

"And it is also agreed that indemnity shall be made by each of the contracting parties to the subjects or citizens of the other party for all losses and damages sustained subsequent to the commencement of the present war, by reason of the seizures and condemnations of the vessels or cargoes belonging to the subjects or citizens of the one party, *which, in the ordinary course of commerce, happened at the commencement of hostilities to be in the port of the other party,* and by reason of the destruction of unfortified towns, and the pillage or destruction of private property, and the enticement and carrying away of negroes, contrary to the known and established usages of war between civilized nations." To this part of the *project*, submitted on the part of the United States, the British plenipotentiaries replied: "*With respect to the 13th article, the indemnifications proposed by it, as applied to the actual circumstances of the war, are so unprecedented and objectionable that any further perseverance of the American plenipotentiaries in requiring them, is not anticipated by the undersigned. If, however, contrary to expectation, indemnification of this kind should be required, all hope of bringing the negotiations to a favorable issue must*

prove abortive. The undersigned are instructed explicitly to declare that, as their government makes no claim on account of losses sustained by British subjects, arising out of a war declared by the United States, so neither can their government agree to make compensations for losses sustained in such war by the American people." But in immediate connection with the same subject the British plenipotentiaries declared, "that they were now willing to agree to a stipulation, by which it shall be provided, that the courts of justice in each country shall be open to the just demands of the respective people, and that no obstructions be thrown in the way of their recovery of the rights, claims or debts of any kind respectively due or belonging to them." This *contre project* was in turn deemed inadmissible by the American commissioners, and hence no stipulation was made upon the subject of indemnifications.

There is surely nothing in all this to authorize the assertion which your excellency makes, that the government or the plenipotentiaries of the United States abandoned this claim in the conferences which preceded, or in the treaty of 1814 itself, made at Ghent between that government and the government of Great Britain. The undersigned repeats that the United States have at no time claimed indemnification from the British government, on account of the destruction of the General Armstrong. The only remedy which the law of nations affords to the injured parties, was a demand against the neutral power, which owed protection to the privateer, and which it refused and failed to give. Portugal suffered the privateer to be destroyed within her neutral territory, under the guns of her castle, without an attempt to guarantee the security which the sovereign of Portugal solemnly admitted belonged of right to her. Upon what principle, then, of reason, of law, or of ethics, can it be maintained, that the voluntary surrender of mutual propositions between the United States and Great Britain, affecting the two nations only upon the subjects referred to, and as preliminary to peace, that the government of Portugal is *ipso facto* absolved from its admitted liability, as a neutral, to one of the belligerents?

The next point insisted on by your excellency, and first made by the Viscount de Castro in his despatch of the 3d of August, 1843, is one which is well calculated to excite astonishment, and which the government of her Majesty, on account of the admissions of its predecessors, ought to be estopped to make. The undersigned refers to the assertion, upon which your excellency appears mainly to base the rejection of this claim, *that in the conflict which resulted finally in the destruction of the General Armstrong, she was herself the original aggressor, and consequently the cause of her own destruction.*

To establish this point, your excellency produces the depositions of Lieutenant Fausset and some of his men, bearing date the 27th of September, 1814, who says, according to the copy furnished by your excellency, "that on Monday the 26th instant, about eight o'clock in the evening, he was ordered to go in the pinnace or guard-boat *unarmed*, on board her Majesty's brig *Carnation*, to know what armed vessel was at anchor in the bay, when Captain Bentham of said brig ordered him to inquire of said vessel, (which, by information, was said to be a privateer.) When said boat came near the privateer they hailed to say the Americans, and desired the English boat to keep off or they would fire into her; upon which Mr. Fausset ordered his men to back astern, and with a boat hook was in the act of so doing, when the Americans, in the most wanton manner, fired into

said English boat, killed two and wounded seven, some of them mortally ; and this, notwithstanding said Fausset frequently called out not to murder them ; that they struck and called for quarters ; said Fausset solemnly declared that no resistance of any kind was made, nor could they do it, not having any arms, nor of course sent to attack said vessel. Also, several Portuguese boats, at the time of said unprecedented attack, were going ashore, which, it seems, were said to be armed."

This deposition made the same day upon which the destruction of the General Armstrong took place, is now, *for the first time*, produced, and your excellency, in waiving the assertion that the privateer was the aggressor, and in rejecting on the part of the government of her Majesty the claims for indemnification on account of her destruction, must conceive it to be entitled to more credit and to outweigh all other testimony adduced upon the claim.

That other testimony is, first, the protest of Captain Reid and his officers, also made under oath, and which is entitled to quite as much credit as the deposition of Lieutenant Fausett, the one being the sufferer, and the other one of the aggressors in the outrage, and both pretending to be eye-witnesses. In that instrument, made September 27, 1814, the same day upon which the said deposition was taken, he says: "That during the afternoon of the 26th September, his crew were employed in taking on board water, when about sunset the brig-of-war *Carnation*, Captain Benthams, appeared suddenly doubling round the northeast point of the port ; she was immediately followed by the *Rota*, of thirty-eight guns, and the seventy-four gun ship *Plantagenet*, Captain Robert Lloyd, which latter, it is understood, commanded the squadron ; they all anchored about seven o'clock p. m., and soon after some *suspicious movements on their part indicating an intention to violate the neutrality of the port*, induced him to order his brig to be warped in shore close under the guns of the castle ; that in the act of doing so *four boats approached his vessel filled with armed men* ; that he repeatedly hailed them and warned them to keep off, which they *disregarding he ordered his men to fire on them*, which was done, killing and wounding several men. *The boats returned the fire, and killed one man and wounded the first lieutenant* ; they then fled to their ships and prepared for a second and more formidable attack."

Mr. Dabney, the Consul of the United States then in Fayal, in his official note of September 26, 1814, at nine o'clock at night, to the Governor of the Azores, says: "In violation of the neutrality which his royal highness, the Prince Regent, has promised to observe towards the United States of America and England in the present war, the ships of war of his Britannic majesty, now lying in this port, lately ordered *four or five armed boats* to surprise and carry off the American armed schooner, the General Armstrong, which is lying here under the guns of the *castle*, on the protection of which she regarded herself absolutely in security ; *the boats were repulsed*, but a new and more formidable attack is now feared," &c., &c.

These witnesses would, in any court of justice under the sun, be taken as abundantly sufficient, did they stand alone, to rebut the testimony of Lieutenant Fausett ; but fortunately for the justice of the cause of the United States government in prosecuting this claim, there is evidence far more impartial than either of them. The undersigned refers to the statements of the Governor of the Azores, the representative of Portugal herself, a perfectly impartial witness, who says to the English commander, in

his note of September 27, 1814, at one o'clock at night, "I must, however, assure you, sir, that from the account which I have received, *it is certain that the British boats were the first to attack the American schooner.*" And again in his official despatch, dated September 28, 1814, from Fayal, addressed to his excellency Señor Antonio de Arango Acivido, in which he relates to him *minutely* the whole occurrence, he says, after mentioning the fact that the American privateer had come into the port of Fayal with the object of obtaining water, and the subsequent arrival of the British squadron under Robert Lloyd, commander in chief, "At ten minutes past nine in the evening I received from the American Consul a note, (No. 1,) in consequence of which I immediately wrote to the British commander the letter, (No. 2,) and sent it at ten o'clock the same night. I then went directly to the castle, *and having been informed of the circumstances which led to these hostile proceedings, I learned that a boat had been sent from the British ships of war to examine the privateer, and on its return three others had been sent armed, and that the captain of the privateer not wishing to allow them to come on board of his vessel, a fire was begun on both sides,* the result of which was that the second officer of the privateer was wounded, and two Englishmen were killed and seven wounded."

Next follows as evidence the view which the government of Portugal itself entertained of the affair, manifested by the note of the Marquis D'Aguiar, then Minister of Foreign Affairs, to Lord Strangford, the British plenipotentiary, at Rio de Janeiro, dated December 22, 1814, a copy of which was sent by the said Marquis D'Aguiar, on the 23d of the same month, to Mr. Sumpter, the minister of the United States of America, in which he informs the British plenipotentiary, "That his excellency will likewise observe *the base attempt of the British commander at the time he commenced the unprovoked attack on the American privateer, to attribute those violent measures to the breaking of the neutrality on the part of the Americans in the first instance, by repelling the British armed barges that were sent for the purpose of reconnoitering that vessel, advocating with the most manifest duplicity, that they were the aggressors,*" &c., &c. But to crown all this, the very government of Great Britain itself, of which this Lieutenant Faussett was the officer, must have been convinced that these statements were untrue, and must also have been most fully assured that her own ships were the aggressors, else she, remarkable for the vigor with which she always sustained her officers, when clothed in the shadow of right, never would have "*disapproved the conduct of Commodore Lloyd by giving satisfaction to the government of her Majesty, and by sending, in March, 1818, compensation for the losses caused to the inhabitants of Fayal by the artillery of the British forces.*" This no one will believe she would have done had the American privateer *first fired without provocation upon an unarmed British boat*, as your excellency labors to show. On the contrary, she would have been much more likely to applaud the conduct of Commodore Lloyd.

We have then the positive testimony of Captain Reid and his officers, of Mr. Dabney, the American consul, and of the Portuguese governor of the Azores, all agreeing perfectly, and in addition the judgment of the cause by both the Portuguese and the British governments, all directly and conclusively against the testimony of Lieutenant Faussett; indeed, except in the note of the British commander to the governor of Fayal of the 26th September, 1814, negatived by the note of the latter of the same night, already

referred to, and characterized by the Marquis D'Aguiar, in his note already quoted, as "a *base attempt* to attribute these violent measures to the breaking of the neutrality on the part of the Americans in the first instance," &c. It is remarkable that we never hear it asserted that the privateer was the aggressor until nearly thirty years after the occurrence, when the Viscount de Castro does so for the first time, and again your Excellency after the lapse of six more years, in your recent despatch.

Your Excellency says, "That if the government of Portugal had taken just and due consideration of this case, and had been in possession of the information which the act of insisting upon this claim by the government of the United States has obtained and procured, it ought also, with all reason, to have demanded from the United States government due satisfaction and reparation for the outrage received at the time they directed themselves to the British government for that purpose."

Your Excellency cannot mean to assert the deposition of Lieutenant Faussett to be *an information obtained and procured by the act of insisting upon this claim by the United States government*; nor that the Portuguese government was not in possession of it, a very short time after the occurrence to which it relates; any such idea is negated by the date which the instrument bears, the 27th September, 1814, and it is fair to presume that it was before both the Portuguese and the British governments when the former demanded, and the latter accorded satisfaction for the outrage.

Your Excellency has not thought proper to state, either by whom *the informations* have been furnished, or in what they consist, by means of which it is now sought to invalidate all the testimony worthy of credit upon the claim, and to stultify the conduct of the then sovereign of Portugal. Supposing these informations, if any such exist, may be found in the correspondence which has taken place between the government of Portugal and that of Great Britain, and anxious to give to them all the consideration which they may merit, and which may be necessary to the most perfect understanding of the whole subject, the undersigned submits a request for copies of all the papers presented by her Majesty's government, containing the diplomatic correspondence and evidence which led to the concession of an apology and indemnification from Great Britain. If this be refused, the government of the United States will be justified in believing that in the prosecution of that branch of the demand against the British government, it was maintained and proved by her Majesty's government that commodore Lloyd was the aggressor, and the American claimants the injured parties.

After resuming the positions which have already been discussed, it could hardly have been supposed that your Excellency would have brought forward at all the last two arguments contained in the despatch, "that the governor of Fayal did afford all the protection of which he was capable to the privateer," and "that it was not the duty of Portugal to protect the neutrality of her port of Fayal further than she did, because of her weakness, &c. As, however, your Excellency has seen fit to rely upon them, the undersigned will now proceed to answer the arguments made.

First, as to the protection which was afforded by the governor to the privateer. He wrote three short notes to the commander of the British squadron, the first dated 26th September, 1814, at ten o'clock at night, informing him that the United States schooner-of-war, General Armstrong, was lying in the port of Fayal, under the dominion of his Royal Highness the Prince

Regent of Portugal, having been obliged to come there from want of water, and *requesting* the said commander to abstain from any hostility against her. The second, written at one o'clock at night, dated September 27, 1814, informing him that he saw the motives which induced him to *violate* the neutrality of the port; assuring him that the British boats were the first to attack the American schooner, and requesting him to put an end to the hostilities begun at eight o'clock of the same night; and the third merely asking a suspension of hostilities until he could have a personal interview. But, as he himself says in his despatch of 28th September, 1814, already quoted from, all was useless, "and all my acts of civility and attention to that officer were unavailing." And in these three short notes, not attended to in the slightest degree by the party to whom they were addressed, consisted all the protection which the governor of the Azores, the representative of the sovereignty of Portugal, even attempted to give to the General Armstrong, which was suffered to be utterly destroyed under the very guns of his castle, within pistol-shot of which she lay. Not only did he fail to attempt to give any protection himself, but he even "*absolutely refused to allow the United States consul to send thirty seamen of his nation, who were then in the island, on board of the privateer in order to increase her forces for her own defence;*" and this, to use his own language, "*notwithstanding he was perfectly aware that force should be repelled by force, and that this is permitted by right.*"

Can your Excellency in the face of these undeniable facts pretend to say that any, even the slightest protection was given to the General Armstrong? Not only was no protection given, but afterwards, when the Americans had come on shore, he even caused them to be disarmed, thus depriving them of the possibility of protecting themselves from the outrages which succeeded.

As to the reasoning based upon the want of power of the governor of the Azores to afford protection to the privateer, the undersigned has already shown that he made no effort whatever to *oblige* the commander of the British squadron to desist from his aggressions. But even admitting, for the sake of argument, that he had not sufficient power, that fact cannot absolve the government of her Majesty from the duty of indemnification for the losses which resulted, either from the want of disposition or from the want of means to carry it into effect. Because the undersigned believes it to be an undoubted principle, "that whenever the law of nations imposes a positive duty, it at the same time imposes a positive obligation to indemnify for losses sustained on account of the non-fulfilment of that duty"—a principle sustained by every writer upon that law, by reason and by the uniform practice of the civilized world, without which any just demand might be evaded. Indeed this argument, based upon the weakness of the governor of the Azores, appears to the undersigned to be addressed altogether to the magnanimity of his government, and to come with a bad grace after the preceding grounds assumed in the despatch of your Excellency.

There is one portion of your Excellency's despatch which the undersigned cannot pass over in silence. It is that portion in which your Excellency seeks to defend the governor of the Azores from the very just animadversions of Mr. Hopkins, for having caused the American seamen, after he had disarmed them, to pass in review before the officers of the British squadron.

To *justify* this conduct your Excellency says, "It is well known that the

British government pretended to have the right of taking away from American vessels English sailors which were found in them, denying, as they still deny, to consider as Americans any subject of Great Britain established in the United States, and on that account he would become a subject of those States according to the constitution of them; founding the pretension of the said government, in the maxim considered as constitutional in England, that it was not permitted to an Englishman to throw off his quality of subject to the British crown to enter the service of a foreign power. This practice, which was one of the causes of the war, was left standing by having concluded the peace of 1814 without deciding it, and, by consequence, the undersigned does not see that there should be reason for Mr. Hopkins to make any observation respecting the examination made of the crew of the privateer."

The undersigned desires to know by what high authority the Governor of the Azores undertook, or your excellency now undertakes to judge and *decide* a question with which Portugal had nothing whatever to do, and of such importance, as your excellency seems well to know, as to have been one of the prime causes of a long and bitter war between two great nations?

The undersigned is bound to view this assumption of your excellency, as he has no doubt it will be regarded by his government, as evincive of a disposition on the part of your excellency to add insult to the wrong which is done by her majesty's government in rejecting the claim.

The undersigned, in answering your excellency's despatch, has given his reasons at greater length than he would have desired, except from the great importance which he attaches to a timely reconsideration of this claim on the part of her Majesty's government, which he again, in a spirit of all candor and respect, urges upon it the necessity of making.

The second despatch of your excellency above alluded to, it can scarcely be supposed will be in any degree satisfactory to the government of the United States, after the very emphatic language of Mr. Hopkins, contained in his note of the 25th July, 1849, "that a delay of the definitive answer of her Majesty's government to the claims of the General Armstrong, of James Hall and of the ship Miles, beyond the day indicated, the 1st October past, would be construed into a denial of justice." The only ground for further delay urged in it being the difficulty of getting testimony from some of the ultra marine possessions of Portugal, whereas one of the cases referred to—that of James Hall—occurred in the very port of Lisbon itself, and none of the testimony upon it can therefore ever be expected to come from any ultra-marine country.

A copy of this despatch the undersigned has had the honor to transmit to his government, and awaits advice of the determination to which it may come upon all of these cases. In the meantime he tenders to your excellency assurances of the distinguished consideration with which he has the honor to be your obedient servant,

JAMES B. CLAY.

His Excellency CONDE DE TOJAL,

Minister and Secretary of State for Foreign Affairs, &c., &c.

L.

[Translation.]

Count Tojal to J. B. Clay.

DEPARTMENT OF STATE,
FOR THE DESPATCH OF FOREIGN AFFAIRS,
March 9, 1850.

The undersigned, Minister and Secretary of State for Foreign Affairs, has had the honor to receive the note which Mr. James Brown Clay, Chargé d'Affaires of the United States of America, has been pleased to address to him, dated the 2d November of last year, in reply to his communication, dated September 29th, of the same year, concerning a claim for indemnification presented by the government of the said States, in behalf of the owners of the American privateer, "General Armstrong," Captain Reid, which was destroyed in the port of Fayal on the night of the 26th of September, 1814, by an English squadron commanded by Commodore Lloyd, and the undersigned, as well as his predecessor, the Viscount de Castro, having produced the necessary arguments to prove that the government of her Majesty can in no manner be held responsible for the injuries done by the said squadron to the owners of the privateer in question, will now confine himself to replying to sundry remarks with which Mr. Clay seeks to refute some of the arguments in question.

As Mr. Clay insists upon it that Captain Reid was not the aggressor, and consequently did not provoke the proceedings of Commodore Lloyd, the undersigned cannot avoid referring again to the written declaration of the captain of the privateer himself, as well as to the deposition of Lieutenant Robert Fausset, of the British navy, taken before their respective consuls at Fayal, and corroborated by the testimony of the pilot and that of a sailor on board the long boat in which the said lieutenant was proceeding towards the privateer. These documents are of the utmost importance to the case under consideration, and have already been alluded to in the note of the undersigned, dated the 29th September last. The above-mentioned documents bear ample evidence that the first gun was fired by the "General Armstrong;" for Captain Reid himself confesses that on his vessel being approached by four long boats from the British squadron, he ordered them to be off, which not being complied with, he then ordered his people to fire upon the English, which was accordingly done, killing and wounding several sailors. An unfortunate occurrence like this was naturally calculated to produce the most disastrous results to the privateer; all the efforts of the honored Governor of Fayal to induce Commodore Lloyd to abstain from any act of hostility against that craft having been entirely frustrated in consequence.

From the sarcastic reply, which the latter gave to the officers who had been sent by that functionary with the honorable intention of avoiding a conflict between the two belligerents, it is clearly seen, that the spirit of retaliation alone, for the great provocation given by the privateer, as Commodore Lloyd terms it, induced him to adopt such harsh measures. It is not to be presumed, that, without the pretext of the privateer being the aggressor, Commodore Lloyd would have had the audacity to capture and destroy the ship of a belligerent in a neutral port; and in the event of his

having done so, the government of her Britannic Majesty or the British court of Admiralty, composed as it is of so many illustrious and upright men, like Sir William Scott and others, would certainly not have failed to stigmatize the proceedings of Commodore Lloyd, and to condemn him in the value of the privateer and costs. It being admitted then by Captain Reid's own confession, that he was the first to fire, and to set the example in violating the laws of a neutral territory: that he went so far as to land a portion of his people, who, according to positive evidence, opened a most terrific fire upon the boats, from an advantageous position, in which they had entrenched themselves for that purpose, how can the government of her Majesty be justly held responsible for the destruction of the aforesaid privateer, a catastrophe so imprudently provoked by her commander? It does not appear to the undersigned, that any belligerent has ever obtained reparation or pecuniary compensation in any identical case; on the contrary, the celebrated American writer, Henry Wheaton, who cannot be mistrusted by Mr. Clay, has established, in his work entitled "*Elements of International Law*," in the chapter—"Rights of war as to neutrals," the principle that neutrals are obliged to protect and defend, "*by all the means in their power, the vessels or effects of those nations in their ports or waters, or on the seas near their shores, and to recover and restore the same to the right owner, when taken from them*," But they "were not bound to make compensation, if *all the means in their power* were used and failed in their effect."

The 25th article of the treaty of 1794, between Great Britain and the United States, stipulates that neither of the contracting parties shall permit the ships or goods belonging to the citizens or subjects of the other to be taken within cannon shot of the coast, nor in any of the bays, ports or rivers of their territories, by ships of war or others having commissions from any prince, republic or state whatever. But in case it should so happen, the party whose territorial right shall thus have been violated, shall use *his utmost endeavors to obtain from the offending party full and ample satisfaction for the vessel or vessels so taken, whether the same be vessels of war or merchant vessels*. It is obvious, then, that in the very treaties which have been concluded between the United States and Great Britain, France, Russia and Holland, the principle of responsibility for any material losses which may be occasioned to either of these nations by a belligerent, is positively renounced, and that the only obligation consists in each nation protecting and defending, *by all the means in its power, the vessels and effects of the nations above mentioned, in its ports and waters*.

Moreover, it is an established principle, that the particular jurisdiction for inquiring into the validity of seizures made in violation of neutral immunity, should only be exercised *with a view of obtaining restitution of specific property*, but never be made to extend to the point of granting indemnification for damages and injuries that may have been occasioned.

In 1759, the squadron of the English Admiral Boscawen attacked and captured two French vessels, "Le Teméraire" and "Le Modeste" belonging to the squadron of M. de La Clue, which were then at anchor under the guns of the forts of Lagoa, in the Algarve; this capture was effected in contemptuous violation of the neutrality of the port and the respect due to the sovereign of Portugal. The Duke of Choiseul, premier Minister of France, sent a requisition in the month of March, 1760, through the Count of Merlé, ambassador of France at the court of Portugal, demanding with

pressing earnestness the restitution of the two vessels. The celebrated Marquis of Pombal, prime minister of King Joseph I, was greatly concerned at this, and omitted nothing on his part to induce the government of his Britannic Majesty to make the desired restitution. The only result which followed, however, was, that the British minister near this court, Lord Kinnoul, was instructed by his government to make a verbal apology to the King of Portugal for the violation of his territory, and to promise that the commanders of vessels of war belonging to his Britannic Majesty should be instructed to conduct themselves with more circumspection in future. Thus ended the whole business, without any restitution being ever made of the vessels heretofore mentioned.

Now, if the principle which Mr. Clay seeks to establish, that a neutral is always bound to make indemnification for material losses caused by one belligerent to another belligerent within its own territory, were as positive and unquestionable as he understands it, would not the French government, in all likelihood, have exacted from the government of Portugal, (which at that epoch, as it is well known, was so opulent and fertile in its resources) a pecuniary compensation for the value of the two vessels, especially when, besides this, there already existed a want of harmony between the two governments, which finally came to a declaration of war in 1762?

Again, the undersigned will cite another fact in support of what he has just stated. During the last war between the United States and Great Britain, some American privateers, seized in the waters of the Portuguese dominions three English vessels, the "Doris," the "Nicholson" and the "Dundee." The first mentioned, having anchored off the Island of Flores, had been captured by the privateer "Grampus" on the 17th of July, 1814; the "Nicholson" and "Dundee" were captured on the 12th of March, 1815, by the privateer "Warrior," within reach of the fort of San Antonio, at the entrance of the bay.

Nevertheless, the government of her Britannic Majesty never exacted from Portugal any pecuniary indemnification on account of that circumstance, although there was evidently a much greater foundation for such a claim than for the one now under consideration. From these facts, which the undersigned submits to the consideration of Mr. Clay, it will be seen that the right upon which he grounds his claim for indemnification against Portugal, is certainly far from being clear and incontestable. In 1814 the government of her Britannic Majesty, through Lord Bathurst, then minister of foreign affairs, directed Mr. Canning, ambassador at Lisbon, near the regency, to give the Portuguese government a verbal satisfaction for the occurrences which had taken place, and which resulted in the destruction of the privateer General Armstrong in the port of Fayal, justifying, at the same time, the conduct of Commodore Lloyd, in regard to the provocation given by the American privateer, which was the first to fire upon the English.

Finally, in 1817, Lord Castlereagh, who was then minister of foreign affairs to her Britannic Majesty, sent the sum of £319 to the inhabitants of the village *da Horta* (since a town) as a compensation for the damage which the balls of the brig *Carnation* had caused to their dwellings, refusing, at the same time, in the most positive manner to indemnify the owners of the privateer, on the ground that the latter had been the aggressor.

With regard to the Governor of Fayal, Mr. Clay alleges that he merely sent three official communications to the commander of the English squadron, in the first of which, dated the 26th of September, 1814, at ten o'clock at night, he begged to abstain from any hostile demonstration against the said privateer; in the second communication, written at one o'clock at night, on the day immediately following, he insisted that an end should be put to the hostilities which he had commenced; and in the third communication he merely demanded a suspension of hostilities until he could obtain an interview with the aforesaid commander; but that those acts of civility and attention between the governor and Commodore Lloyd led to no results, and that this was all the protection that the governor, representing the King of Portugal, attempted to give to the privateer General Armstrong, which was thus allowed to be destroyed within pistol shot of the fortress. In view of such a reprimand, the undersigned begs leave to ask—what would have been the consequences if the said governor had given orders for the fortress—which mounted only seven guns of small calibre—to fire upon the boats of the squadron under the command of Commodore Lloyd, who had one hundred and forty pieces of heavy artillery and one thousand two hundred men at his disposal?

No one can doubt but that the fortress, as well as the inmates thereof, would have been destroyed in very few minutes, *without being able by that act to prevent the destruction of the privateer*, as the United States consul at Fayal himself attested. The undersigned is extremely sorry that Mr. Clay should have construed as indecorous to the United States the language which he used in explaining the motives which governed the Governor of Fayal in permitting the officers of the English squadron to examine the crew of the privateer after they had been landed, in order to ascertain whether any British subjects were to be found among them.

In alluding to this point of the controversy in his former note, the undersigned only meant to say that the Governor of Fayal, knowing that the English insisted upon their right to reclaim their sailors wherever they might find them, submitted in good faith to this conviction. It is evident besides, that the people of the privateer, as soon as they found themselves upon land, mingled freely with the crews of the English squadron; that it was the sailors of the privateer themselves who informed the English officers that they had *ten British subjects* among them, and that it was in consequence of these representations that Commodore Lloyd insisted upon the governor's allowing him to examine the protections of the privateer's crew; showing, in conclusion, that although the people of the General Armstrong (as it has been stated) repeatedly asserted that the ten British subjects, referred to above, had false protections, inasmuch as they were Irishmen, he, the governor, respected the alleged nationality of those individuals. The undersigned would certainly be the last person to give, intentionally, the slightest cause of offence to the government of a nation for which he entertains the greatest admiration and sympathy, and among which he passed the first years of his youth, maintaining, even at this day, the closest relations with it.

The undersigned hopes, therefore, that the explanation he has just given will have the effect of removing from Mr. Clay's mind any impressions which may have been produced by his manner of expressing himself, in regard to the motives which actuated the Governor of Fayal in allowing the protections of the crew of the privateer to be examined.

The undersigned trusts that the reasons which have been given to show that the Portuguese government cannot, with justice, be compelled to satisfy the claim in question, will be taken into due consideration by the government of the United States; seeing that all the opinions and authorities that have been consulted in relation to this important subject agree in sustaining the fact, that no neutral is obliged to give pecuniary indemnification for damages and material losses that may have been caused in its ports by one belligerent to another, once it can be shown that it has used *all the means at its disposal* to give protection.

It being, then, an undeniable fact that Captain Reid was the first to fire upon the boats of the English squadron, and that the Governor of Fayal employed all the means within his reach to prevent the destruction of the privateer—finding himself, moreover, destitute of the necessary force to prevent the act of retaliation which the same squadron resorted to—all the arguments with which it is attempted to hold the government of her Majesty responsible for the want of physical protection, which the said Governor of Fayal found it impossible to lend to the privateer, fall to the ground.

The undersigned, &c., &c., &c.

CONDE DE TOJAL.

M.

J. B. Clay to the Count Tojal.

LEGATION OF THE UNITED STATES,
Lisbon, March 15, 1850.

The undersigned, chargé d'affaires of the United States of America, has had the honor to receive the note addressed to him by his Excellency the Conde de Tojal, dated the 9th instant, in which his Excellency, in an argument to which the undersigned has given all his attention, sets forth the grounds upon which her Majesty's government continues to refuse indemnification in the case of the American privateer General Armstrong.

Conceding great ingenuity and plausibility to that argument, the undersigned begs to assure his Excellency that he is actuated by no other motive than a strong desire for the amicable and friendly settlement of the claim, in giving the reasons why he considers it only plausible.

The undersigned will not again go over the testimony to prove that the British boats, and not the Armstrong, were the aggressors in the unfortunate conflict which is the origin of the claim. He admits that the first gun was fired from the privateer; but contends that the British boats having approached her in a hostile array, and being ordered off, which order they failed or refused to obey, the privateer was not bound to wait until they struck the first blow, but being authorized to conclude that their purpose was to board and capture her, she had a right to defend herself, and anticipate the fall of the blow, exactly as when an assault is made upon a man, not yet followed by a battery, he is not bound to await the battery, but may defend himself forthwith.

His Excellency says it is not presumable that without the pretext of the Armstrong's being the aggressor, Commodore Lloyd would have had the

audacity to capture and destroy the ship of a belligerent in a neutral port! How much less can it be presumed that Captain Reid would have had the insanity to commence, without just cause, an attack with a small brig upon a seventy-four gun ship, a frigate and a brig!

The undersigned is informed for the first time of the refusal of the British court of admiralty to stigmatize the proceeding of Commodore Lloyd, and to condemn him in the value of the privateer and costs. He cannot believe that all the testimony now before the government of her Majesty was adduced before men so deservedly characterized by his Excellency as illustrious, as Sir Wm. Scott, but must believe that in such decision as is stated to have been made, the testimony of Lieutenant Faussett and his men was alone considered, or that their judgments were warped by prejudice against those who had made so eloquent a remonstrance against aggression as Captain Reid and his gallant crew had done. Neither could the true facts have been before Lord Castlereigh, or he never could have denied indemnification to the owners of the privateer, *on the ground that she was the aggressor*. And finally upon this point the undersigned has already had the honor to call the attention of his Excellency to the fact, that immediately after the occurrence the Portuguese government, by its minister the Marquis de Aguiar, asserted to the British government that Captain Lloyd was the aggressor, and the British government admitted the fact, by "*disapproving the conduct of Captain Lloyd, by giving satisfaction to the government of her Majesty*," as is stated in the note of his Excellency of the 29th September, 1849. How could the British government have done this unless it believed that Captain Lloyd was the aggressor, and had encroached upon the sovereignty of Portugal? And how Portugal could have called upon that government for satisfaction and indemnity for wrong done by the American privateer, and not upon the government of the United States, is entirely incomprehensible.

The undersigned asserted in his note of the 2d November last, and now reasserts it to be a principle of national law, that it is a duty of a neutral to afford protection to a belligerent coming in proper manner within her territory and jurisdiction, against the aggressions of another belligerent; and that failing or refusing to afford that protection, it is her duty to indemnify the party upon whom the aggression has so been committed. Did not the duty to indemnify result from the duty to protect, the latter would be a nude obligation, subject only to the pleasure of the neutral to comply with it or not; and it cannot be maintained that any positive law can ever be subject merely to the pleasure of the party whose duty it prescribes.

His Excellency cites against this principle cases of French ships taken by the English, and of British ships taken by the Americans, within the jurisdiction of Portugal, as he alleges, in which he asserts that no pecuniary indemnity was exacted of Portugal either by the French or by the English. The undersigned does not conceive that the conduct of France and Great Britain in these cases renders the rule of national law which he has asserted less clear, or more open to contest. These nations did not insist upon pecuniary indemnification in the cases referred to for reasons best known to their respective governments, and as to which the undersigned cannot inquire; but he holds it to be beyond question, that whatever reasons may have actuated them, their failure to exercise *their* right cannot be considered as an argument against the *right* of another nation in a similar case.

The passage quoted by his Excellency from Whinton, an eminent writer

for whose opinions the undersigned has great respect, refers to rights and duties resulting from treaties by which the United States, France, Prussia and Holland were bound to each other, and not to rights and duties under the general law of nations. It is perfectly competent to nations to make with each other whatever stipulations they may see fit, altering, changing, or abrogating altogether the general law as to them in their relations with each other; and in the quotation referred to it appears that the abovementioned nations did enter into certain agreements with each other by treaties, one of which was that referred to by his Excellency; but as to nations not parties to the treaty which alters the general law, it remains as though no such treaty had ever been made, with all its rights, duties, and obligations. And so stands Portugal with the United States; there is no such treaty between them to change their relations towards each other in this respect, under the general law, and it exists as to them in all its force.

But his Excellency admits that Portugal would be bound to make indemnity in this issue, if she had not used all the means in her power to protect and defend the privateer. He admits it when he says "that no neutral is obliged to indemnify *pecuniarily* the damages or material losses caused in her ports by one belligerent to another, once that it shows that it has employed *all means at its disposal to protect it.*"

Let us suppose that the United States should be unwilling that the provisions of her treaties with France, Prussia and Holland, should be extended in this case to Portugal. We are then to inquire whether Portugal did or did not "protect and defend, *by all the means in her power,*" the privateer General Armstrong. What were the means in her power? She had the physical power of more than one hundred regular soldiers, some artillery, a fort, the power of the population of Fayal, about thirty American seamen, who requested to be allowed to befend their brethren, great advantage of position, and the immense moral power of right against wrong; these were the means she had. Did she use all or any of them to protect and defend the privateer? Confessedly she did not; she even went beyond mere failure to defend or protect when she prevented the American seamen from rendering whatever assistance was in their power. And if she did not use *all these means*, is it not clear from his excellency's own argument that she is bound to indemnify?

But his excellency contends that *these means* were not used because they would have been insufficient! The undersigned does not admit that they would have been insufficient; but on the contrary, believes, from the great effect produced by the resistance of the privateer alone and without encouragement, that, had they been employed, they might have been sufficient; who can say what effect the moral influence alone of the firing of a single gun by the Portuguese authorities might have had to cause the arrogant British commander to pause, to hesitate, and finally to desist from his aggression? But again: admitting that they would have been insufficient, the case stands just as it did before; Portugal under the law, which his excellency admits, was bound to have employed them all, sufficient or insufficient, before she could claim, even under that law, exemption from the duty to indemnify. She elected not to employ her means, as her governor says, because she, perhaps, believed them insufficient, but in making that election she, of course, chose the other alternative to indemnify for the failure to employ her means to *protect and defend*.

His excellency says that it does not appear to him that any belligerent

has ever obtained reparation or pecuniary compensation in any identical case!

There are many cases cited by the best authorities upon national law, of the restitution of ships and other property taken by one belligerent from another under similar circumstances; and the reason that there are not more cases of pecuniary indemnity having been made, is that the aggression has seldom extended to the total destruction of the vessel or property, so that it could not be restored. But the undersigned will cite one remarkable case in point. In 1793 the United States, having but lately achieved their independence, were weak in population and resources, quite as much so as Portugal was in 1814; France had always been her friend and ally, and Great Britain had been her oppressor; these two great nations were at war, and the French frigate *L'Ambuscadé* took within the capes of Delaware, in the waters of the United States, the British ship *Grangé*. Where the *Grangé* was taken the United States *had no means in their power to protect and defend her*; but actuated by a sense of justice and a true conception of her duty, she said to her ally, France, "You must restore this vessel and cargo to their proper owners, the English;" and General Washington, the father of his country, a man illustrious in every civilized land, in his message to Congress upon the subject, he then being President, used the following language: "Rather than employ force for the restitution of certain vessels which I deemed the United States bound to restore, I thought it more advisable to satisfy the parties by avowing it to be my opinion, that if restitution were not made, it would be incumbent on the United States to make compensation."

The vessel was restored and the principle asserted, shows that the United States was ready to do towards another nation that which she expects from Portugal, in a case so exactly in point. She would have elected not to use force, and consequently acknowledged the duty to indemnify; so Portugal having elected not to use force, ought to indemnify.

The undersigned continues to cherish the hope that his Majesty's government may yet change its determination, and make indemnification to the owners, &c., &c., of the *General Armstrong*, which he believes to be so just. He embraces this occasion to renew, &c., &c.,

JAMES B. CLAY.

To his Excellency the COUNT DE TOJAL,

Minister and Secretary of State for Foreign Affairs.

N.

[Translation.]

Count Tojal to Mr. Clay.

DEPARTMENT OF STATE FOR FOREIGN AFFAIRS,

April 15, 1850.

The undersigned, Minister and Secretary of State for foreign affairs, has had the honor to receive the note which Mr. James Brown Clay addressed to him on the 15th of last month, replying to the undersigned's communication of the 9th of said month, in respect to the "*General Armstrong*"

claim, and cannot but be sensible to Mr. Clay's expressions and assurances of his earnest desire to conclude this affair in the most harmonious and amicable manner.

In answer thereto the undersigned begs to say that as Mr. Clay admits, with his characteristic frankness and candor *that the first shot was fired from the privateer*, that fact alone suffices to prove that the privateer was the first to violate the neutrality of the territory, and not the British squadron, and that the subsequent proceeding of the latter against the former cannot be considered otherwise but as an immediate consequence of such a provocation.

Mr. Clay states that the captain of the privateer presumed that the first boat, or the four English boats which neared him, came with the full intention to board and capture him; that it was under this supposition he assumed the right to defend himself, and to anticipate the attack. Nevertheless, the undersigned cannot admit that a mere supposition which Captain Reid had as to the *intention* of the English boats would justify him to fire, and thus first violate the neutrality of the territory.

The said captain alleges that the English were armed, but this statement of his could not be more than a simple presumption as, being night, it was not possible to distinguish from on board the privateer if there were arms or not in the boats; and even had they carried arms, it might have been as a usual precaution, without necessarily implying a commission of hostilities against the privateer if the latter should have remained quiet, inoffensive, and have invoked the neutrality of the port. It cannot therefore be credited for a moment that, without any provocation from Captain Reid, of the privateer "General Armstrong," Commodore Lloyd would have dared to have taken the responsibility to violate the neutrality of the port of Fayal against the privateer.

Allowing even, for the sake of argument, that Commodore Lloyd had committed the temerity to capture the privateer while quietly anchored in the port of Fayal, and unresistingly had taken it to Jamaica, Bermuda or Halifax, to be judged in any of its courts of admiralty, is it to be credited for a moment that, under the circumstances, the privateer "General Armstrong" would have been condemned as a good and legitimate prize, and that it would not have been released immediately, with full compensation for loss and damages, by Commodore Lloyd? Certainly not; for an opposite result would have been the most scandalous and licentious infraction of public international law.

If, therefore, Captain Reid, urged at that period by the national animosity against the English, wished to exert his unrestrained courage by attacking them first, in the port of Fayal, he certainly cannot be allowed the right to bring forward a claim against the Portuguese government for the destruction of his privateer, which he then so evidently provoked.

Can there perchance be such a law as could condemn a neutral to indemnify a belligerent for the damages he had thus brought upon himself? The undersigned cannot think so, and for that reason had stated in his note of the 9th of last month he could not imagine that a case similar to this could be presented in which the neutral could be compelled to compensate for like damages; and although the Marquis of Aguiar, Minister for Foreign Affairs in Rio Janeiro in 1844, stigmatized and qualified Commodore Lloyd's conduct as aggressive, subsequent documents, furnished by her Britannic Majesty's government, have put in a clearer light many points of this

occurrence and demonstrated that the imprudent conduct of the captain of the privateer, resulting in the disabling of nearly two hundred men of the English squadron, in killed and wounded, justified, to a certain extent, the attack of the brig "Carnation."

It must be borne in mind that it *was the Americans who set fire to their own privateer*, when upon nearing the said brig, they abandoned her and went on shore; nor must the circumstance adverted to in the undersigned's previous note, and which is proved by the said documents, be overlooked; the fact of the privateer having landed part of its crew before the brig-of-war had ranged alongside of her, and that from the advantageous flank position it occupied *on shore*, poured a deadly fire upon the said brig and the British boats, a circumstance this, which most certainly rendered the Americans the first to give the most flagrant example of the violation of the neutrality of the territory, making it, therefore, less surprising that the English should have imitated them. If the Portuguese government did not remonstrate for this violation of its territory by the crew of the privateer, it was in consideration of the disastrous consequences to the privateer which it sincerely regretted, and was very desirous to have prevented, to which it tended all its endeavors, as has been proved.

Mr. Clay insists that according to established principles of international law, it is the duty of a neutral to grant protection to a belligerent who seeks refuge in his territory and jurisdiction, against the aggressors of another belligerent; and should such neutral deny protection or find himself in the impossibility to give it, he is always obliged to indemnify the party against whom the aggression was committed. So absolute a principle as that which Mr. Clay wishes to establish for such cases, cannot certainly, the undersigned thinks, be generally admitted. Let us suppose for example that a Spanish gallion with a few millions of dollars on board, had sailed from Vera Cruz in 1815, when hostilities existed between Spain and England, bound to Cadiz; that chased by an English man-of-war, it sought refuge in the waters of the bay of Chesapeake, and that the man-of-war of a much superior force, had sent its boats at night to board it, (registrar) the said gallion without confiding in the usual protection which the neutrality of the American waters offered, commenced firing into the English boats and killed many of their crew, and that at this provocation the English man-of-war had laid aside of the gallion and sunk her, would, it is asked, the American government perchance considered itself bound to pay Spain for the six or eight millions of dollars lost with the Spanish vessel? It is supposed not. Well, this hypothesis is exactly like the case of the privateer "General Armstrong," and proves that the principle which Mr. Clay wishes so absolutely to establish, must necessarily be subjected to many modifications according to the special circumstances of each case. If the first President of the United States, the immortal Washington, as Mr. Clay says, thought proper to satisfy the value of the English vessel "Grange," which had been captured by the French frigate "L'Ambuscadé," within the capes of Delaware, and if France subsequently, in consequence of the representations of that President, delivered up the said vessel and its cargo, this precedent, the undersigned thinks, although highly honorable and worthy of that great statesman, cannot apply to the case of the "General Armstrong." The English ship "Grange" did not fire a gun, and was not the first to violate the neutrality of the American territory; this was not the proceeding of the privateer "General Armstrong," which most undoubt-

edly gave the example of violating the Portuguese territory. Besides, the ship "Grange" and its cargo were not destroyed; they could therefore be restored, as in fact they were, while the said privateer was not captured, but destroyed for being the first to attack, which is essentially different. In 1793, the United States were then, perhaps, the only neutral nation, when all the European nations were carrying on a general war against France, and the American vessels being then the only carriers of nearly all the merchandise of other nations, it suited them to establish the amplest interpretation of the doctrine and principles of international law as between neutrals and belligerents, as their most important interest required in that conjuncture, it is not, therefore, surprising that the enlightened government of the United States should have decided as it did, in respect to the isolated case of the English ship "Grange." This same, and other analogous doctrines, all in favor of most ample rights of neutrals, have ever been maintained by the government of the United States, but they have not always with the same amplex been admitted by other and principal nations, as the celebrated "orders in council" of the British government and the "Berlin and Milan decrees" of the Emperor Napoleon will prove, which attacked at their foundation those same principles of international law which the government of the United States has been desirous to maintain as unalterable, and which has given rise to so many disputes between neutrals and belligerents in our days!

The government of her Majesty cannot, either by any principle of relative justice or of international law, in view of all the reasons which have been stated, consider itself obliged to satisfy the value of the privateer "General Armstrong," taking into consideration the very special circumstances of this case.

If, therefore, the government of the United States, notwithstanding all the reasons and arguments which have been advanced to show the absence of all right, in claiming of Portugal indemnification for the damages occasioned by the destruction of the privateer "General Armstrong," do not yet consider itself satisfied, the government of her Majesty being desirous to bring this, as well as all other pending subjects with the government of the United States, to an amicable settlement, and to maintain perpetual harmony with the said government and people, as is the interest of both nations, will now propose to refer this affair to the decision of a third power, even now indicating his majesty, the king of Sweden, the monarch of a distinguished maritime nation, to whom the rights of neutrals are equally important, in case his Majesty be pleased to accede to the request which would for that purpose be made, as the undersigned believes this can be the only way to obtain a just and well grounded decision in respect to the question in controversy, comprising important points and principles of public law, which both governments, on that account, should be earnestly desirous to see thus settled in a friendly, honorable, and suitable manner.

The undersigned awaits the answer of Mr. James Brown Clay, to whom he has the honor to reiterate the protests of his most distinguished consideration.

CONDE DE TOJAL.

O.

LEGATION OF THE UNITED STATES,
Lisbon, April 24, 1850.

The undersigned chargé d'affaires of the United States of America, has had the honor to receive the note addressed to him by his Excellency the Conde de Tojal, dated the sixteenth instant.

Without intending further to prolong the argument upon the case of the General Armstrong, to which the said note refers, and which the undersigned conceives to have been already extended to an unnecessary length, he desires now simply to correct some misconceptions of his note of the 15th ultimo, which, it appears to him, are entertained by his Excellency.

The undersigned in admitting, as he was bound by the truth to admit, that the first gun was fired from the Armstrong, did not admit that she thereby was the first to break the neutrality of the port of Fayal, but expressly argued, and he thinks with all reason, that she did no more than she had a right to do by the law of nations, and under every other law human and divine. His Excellency assumes the position that the Armstrong was the first to violate the neutrality of Fayal, and then goes on to make his argument upon the basis of that assumption; now the undersigned has always contended that, according to the proof, the neutrality of the port was first broken by the hostile approach of the British armed boats, with the intention to capture or destroy the privateer; had their intention been merely to reconnoitre, an armed reconnaissance, in a neutral port, of an enemy's vessel, would have been equally against the law of nations, and the Armstrong would have been perfectly justifiable in preventing it by force of arms, without being guilty of any violation of neutrality. After having appealed to the Portuguese authorities for protection against the aggression of the British commander, as she did, and failing to receive it, the privateer had the choice of two alternatives, either to suffer herself quietly to be taken or to defend herself; she chose the more noble of the two, and the fact of her endeavoring to defend herself cannot, in any way, exonerate Portugal from the consequences of her failure to do that, which was her duty under the laws of nations.

The undersigned will not extend the argument he has already made upon the principle of national law, which he asserted, and which he maintains to be perfectly true, "that it is the duty of neutral powers to afford protection to a belligerent, *coming in proper manner within her territory and jurisdiction*, against the aggressions of another belligerent; and that, failing or refusing to afford that protection, it is her duty to indemnify the party upon whom the aggression has so been committed;" as to the case put by his Excellency, of a ship taking refuge in a neutral port from the fresh pursuit of an enemy, a question might arise whether she *came in proper manner into the neutral territory*; but as that question has no relation to the case of the Armstrong, the undersigned does not think it necessary to discuss it or to give an opinion upon it.

The undersigned contented himself, in his note of the 15th ultimo, with citing the case of the ship "Grange;" there were, about the same time, several other cases precisely similar to that of the Grange, which had similar results, and to which the language of General Washington was intended to apply, all of them showing the just construction which the United States gave to her neutral duties.

As to the celebrated British orders in council, she herself never successfully pretended to justify them under the the law of nations, but only a retaliative war measure against the Berlin and Milan decrees of Napoleon, which were equally unjustifiable under that law, and never would have been promulgated in an enlightened age, by a sovereign less powerful or less absolute than the great Emperor of the French.

His Excellency concludes his said note by proposing to refer the case of the General Armstrong to the arbitration of a third power! This proposition, under all the circumstances, the undersigned having full instructions and authority, declines to accede to on the part of his government. He, also, now declines on the part of his government to accede to the other propositions contained in the note of his Excellency of the 11th instant, to refer the case of the ship Miles to the arbitration of certain merchants of Lisbon.

The undersigned renews, &c., &c., &c.

JAMES B. CLAY.

To his Excellency the CONDE DE TOJAL,
Minister and Secretary of State for Foreign Affairs.

P.

[Translation.]

Count Tojal to J. B. Clay.

DEPARTMENT OF STATE
FOR THE TRANSACTION OF FOREIGN AFFAIRS,
May 15, 1850.

The undersigned, Minister and Secretary of State for Foreign Affairs, has had the honor to receive the note, dated the 24th of last month, which Mr. James Brown Clay, chargé d'affaires of the United States of America, has been pleased to address to him, in reply to his communication of the 15th of the same month, upon the subject of the American privateer General Armstrong; and having carefully examined its contents, he will now proceed to offer a few remarks.

In his answer, Mr. Clay continues frankly to admit that the first shots were fired by the aforesaid American privateer, but that he does not consider that fact as constituting a violation of the neutrality of the port of Fayal; and he maintains again that the privateer did nothing more than exercise the right conceded by international law, and by every other law human and divine, insisting, on the contrary, that the neutrality of the port of Fayal was first violated by the British squadron under Commodore Lloyd by the act of sending *armed* boats for the purpose, as Mr. Clay avers, of capturing or destroying the privateer; and that even if such had not been his intention, but simply that of reconnoitering, with arms in hand, an enemy's vessel in a neutral port, that the aforesaid corsair was perfectly justified in resisting such attempt at reconnoitering by force of arms, without incurring the imputation of having violated, on that account, the neutrality of the port. From which Mr. Clay arrives at the conclusion, that the only alternative left to the aforesaid privateer, was either to allow her-

self to be quietly captured, or to defend herself; and that she selected the most noble of the two—that of defending herself; and that this circumstance cannot in any way render Portugal irresponsible for the consequences of her destruction, or for not having been able to afford that protection which it was the duty of the authorities of that country to extend. Mr. Clay maintains moreover that it is a principle established by international law, making it the duty of a neutral to protect any belligerent that may seek an asylum in any territory under its jurisdiction, against the aggressions of another neutral, and that if such protection be not granted, either from want of *ability* or inclination, he is obliged to indemnify the party against which the act of aggression has been committed.

The undersigned, however much he may respect the opinions of Mr. Clay, must still be allowed to remark, that so absolute and decisive a principle does not lay at the foundation of any *positive* law; and that it is impossible, therefore, to admit that the owners of the privateer have any right to claim indemnification from the Portuguese government for the losses they allege to have sustained in consequence of the destruction of that vessel, provoked as it was by her own acts, (inasmuch as the same Captain Reid opened fire as soon as he had found a sheltered spot on land,) because it is not to be credited for a single moment, that Commodore Lloyd would have committed the enormity of capturing or destroying the aforesaid privateer in the port of Fayal, without having previously received some provocation, which he had in fact received, and in a most flagrant manner, on the part of Captain Reid, who had fired upon the English boats, and before time had been allowed for ascertaining the intentions of those that were in them; it was owing to this particular circumstance that the government of his Britannic Majesty neither disavowed nor condemned the conduct of Commodore Lloyd, (as it has been asserted,) being of opinion, and having likewise always maintained, that the conduct of Commodore Lloyd was fully justified as a mere act of retaliation provoked by the hostilities, previously commenced by Captain Reid, &c. So true is it, that in consequence of the provocation specified above, the English government does not consider the conduct of Commodore Lloyd as amenable to censure; that upon being informed of its having been asserted in the course of this correspondence that Commodore Lloyd had been reprimanded by the government of his Britannic Majesty, on account of his conduct in the affair of the privateer General Armstrong, an *official* communication was sent a few days ago to the government of her most faithful Majesty, stating that the assertions in regard to such censures, were entirely destitute of foundation.

The doctrine which Mr. Clay seeks to establish, that a neutral is *always* obliged to make compensation for material losses caused by one belligerent to another, within its own territory, whether or not it have the ability to afford the required protection, appears to the undersigned to be absolutely without support. Such doctrine being once imperatively established by the United States, as positive and unalterable law, the result would be that if the latter were to become involved in a war with another maritime power, Portugal, as well as all the other nations of a less powerful calibre, would be under the necessity of invariably closing their ports against American vessels, in order to avoid the inevitable consequences of this doctrine; seeing the impossibility of defending them in isolated ports, where all the necessary means are wanting, as it happened in the port of Fayal, against the attacks of another maritime force of a superior power. Thus, if the

government of the United States should likewise desire to support this doctrine of Mr. Clay's, and seek by violent means, (which does not constitute a right, and is a poor argument when employed against a weaker antagonist) to compel Portugal, in whose port there were no adequate means to prevent the attack of the squadron under Commodore Lloyd, composed as it was, and as Mr. Clay is fully aware, of three vessels carrying one hundred and forty heavy guns and one thousand two hundred men, to pay the value of the privateer, the government of the United States should not think it strange if Portugal and other neutral nations were to refuse admittance into their ports to all American vessels, in any future case of war that might occur between the same United States and any other great maritime nation; and yet this would be an act fully justified by the principles which Mr. Clay insists upon establishing; and other nations, placed in the same circumstances as Portugal, would also find themselves, in a similar case, under the necessity of following so prudent a course. Any principle or precept capable of giving birth to so absurd an idea, as that expressed in this hypothetical figure, appears to the undersigned as utterly unsusceptible of support.

If France, as well as England, whose respective cases have been dwelt upon by the undersigned in his note of the 9th of last March, and which relate to the capture of English vessels by American privateers in 1814, and the seizure of the French vessels *Le Téméraire* et *le Modeste*, (effected in the bay of Lagos in 1759, by the squadron of the English Admiral Boscawen) did not exact from Portugal payment for the value of the captured vessels, it was certainly not in consequence of indifference felt for the national honor and national interests, inasmuch as, upon this point, neither of those two nations would yield aught to any other, but because they could not apply to the principle which Mr. Clay maintains in relation to the strict responsibility of a neutral, so latitudinous and rigid an interpretation with justice and propriety. In view, therefore, of all these complicated circumstances, the government of her most faithful Majesty is truly and seriously concerned at Mr. Clay's refusal to refer this business to the decision of an arbiter, for which purpose the undersigned proposed his Majesty the King of Sweden, as the sovereign of an enlightened maritime nation, who is in no way related either by blood or by any other tie of a binding character to her most faithful Majesty, and who would undoubtedly be impartial in determining the merits of all the circumstances of the case under consideration; while, as regards the decision he would be called upon to give, any other sovereign would be equally acceptable to the Portuguese government; and if the government of the United States should finally reject so just an arbitration, public opinion, which, owing to the peculiarities of the case, is at this day not a little excited on the subject, might infer that the aforesaid government of the United States is not penetrated with entire conviction of the justice of its cause.

At the same period when the actual government of the United States is exacting from Portugal, with so much persistence and obstinacy, the immediate settlement of five or six claims of such small account and of a very doubtful character, owing to the peculiar circumstances connected with them, the government of Portugal has several claims of much greater importance even now pending against the government of the United States, involving more than a million of dollars, the aggregate value of a large number of claims, founded upon one hundred and five prizes, being Portu-

guese vessels with valuable cargoes taken by American privateers, under the flag of Artigas, which had been entirely fitted out, and in the most public manner, in the ports of the United States, at a time when the latter were in the midst of profound and general peace; claims these, which at that time called forth the strenuous remonstrances of the Portuguese minister then at Washington, José Correã de Serra, from the year 1816 till 1821, when he left without having been able to accomplish anything; the same unsuccessful results having attended the exertions of the Minister Barroso and his successor, Torlades, who presented these claims in Washington until 1834, in spite of such undoubted right on the part of Portugal to press for the indemnification claimed—a right which is incontrovertable—which is backed by irrefutable documents prepared by the chamber of commerce—a right which Portugal never can renounce. The undersigned hopes, therefore, more especially on account of this circumstance, that Mr. Clay will not fail to represent to his enlightened and conscientious government, the expediency and propriety of referring the case of the General Armstrong, as well as that of the ship Miles (the latter being purely a commercial question, and proper only to be judged by those who are acquainted with the subject) to competent arbitration, in order that the adjudication of the question may not be made a trial of physical strength between a gigantic nation and another that is so friendly, and yet so incapable of resisting her. It is certain that the government of her Majesty could not have given a clearer proof of its good faith, and of its most earnest wish to cultivate a friendly intercourse with the United States, than by its proposal to refer the settlement of these claims to arbiters that shall be named respectively by both parties. This, moreover, would undoubtedly be the only impartial and decorous means of disposing finally of the question to the satisfaction of both governments and both nations.

In view of all that has been said, the undersigned would feel seriously concerned if the adjustment of the aforesaid claims were not to be followed by the most perfect harmony, and if the government of United States, for which he entertains the utmost sympathy and consideration, were not actuated by the same sentiments, as Mr. Clay has already expressed with so much frankness in his note of the 15th of last March.

The Portuguese government is so far from desiring to loosen the ties of friendship now existing between the two nations, that even at this moment it is contemplating, by a proposition to that effect actually made to the Cortes, to raise the legation of her Majesty in Washington to the category of a second grade mission—a proposition which has already been approved by the Committee on Diplomatic Affairs in the Chamber of Deputies, and which the undersigned hopes may soon become law, affording thus a new proof how much the Portuguese government is disposed to maintain the best and most lasting harmony, and to strengthen, as much as possible, its relations of commerce and friendship with the United States of America.

The undersigned trusts, therefore, that sentiments of so conciliatory a character on the part of the Portuguese government and the Portuguese nation, will be appreciated and reciprocated by the American government, and that *all* these pending questions, of so little importance in themselves, may be decided in all cases in the most friendly manner, as it comports with the character, honor and interest of both these nations.

The undersigned renews on this occasion to Mr. James Brown Clay, the assurances of his most distinguished consideration.

COUNT OF TOJAL.

Q.

James B. Clay to Count Tojal.

LEGATION OF THE UNITED STATES,

Lisbon, May 16, 1850.

The undersigned, Chargé d'Affaires of the United States of America, has the honor to acknowledge the receipt of the note of his Excellency the Conde de Tojal, dated the 15th instant.

In reply to remarks of his Excellency, respecting the principle of national law asserted by the undersigned, he will simply observe that his Excellency has now, as he did also in his note of the 16th of April, given a version of the law in language much more broad than has ever been used by the undersigned, and as that version has not been asserted by him, he does not think it necessary to discuss a proposition which his Excellency characterizes as dogmatic, and whose consequences he contends are absurd.

Although the undersigned did assert a broad principle of national law which he believes to be a true principle, the admissions of his Excellency spared him the necessity of insisting on it in argument; he refers to the admission in the note of his Excellency of the 9th of March last, couched in this language: "That no neutral is obliged to indemnify *pecuniarily* the damages or material losses caused in her ports by one belligerent to another, once that it shows that it has employed *all means* at its disposal to prevent it." In his note of the 15th March last, the undersigned based a principal part of his argument upon this admission of law, and the admission of fact also made by his Excellency and the governor of Fayal, that Portugal did not employ all her means, or indeed any of them, to defend and protect the privateer General Armstrong, which argument has not been yet rejected.

As to the assertion that Great Britain had censured the conduct of Commodore Lloyd, it was made by the undersigned from the information given by his Excellency, and the very language of his note of the 29th of September, 1849. He regards it as wholly unimportant that his Excellency has now discovered that information to have been incorrect, neither did he attach much consequence to it at the time; as however great his respect for Great Britain, he has never considered her decisions or her opinions upon this case, as at all relevant to the issue between the United States and Portugal.

In answer to the request of his Excellency that the undersigned should communicate to his government the proposals to refer the claims of the General Armstrong and of the ship Miles, to arbitrators, he has the honor to inform his Excellency, that a very few days after the reception of the notes making the respective propositions, he transmitted copies of them to his government, as well as information of the fact of his having declined to accede to them; he has already had the honor to state to his Excellency that he had authority and instructions for the course which he pursued in that respect.

The government of the United States has always been anxious to obtain the adjustment of the claims of her citizens against Portugal in a friendly manner, and to draw closer the bonds of an intercourse which she hoped might be conducive to the interest of both countries; in proof of this the undersigned has only to call attention to the forbearing patience which she has exercised in the negotiations respecting these claims; months and years

without answer to her notes, and finally rejections of every claim but one. She is now quite as anxious for their settlement, and the undersigned has always expressed to his Excellency the ardent desire he himself entertains, to be an instrument to effect that end.

He renews to his Excellency, assurances of the distinguished consideration with which he has the honor to remain his most obedient servant,

JAMES B. CLAY.

To his Excellency, the CONDE DE TOJAL,

Minister and Secretary of State for Foreign Affairs.

R.

[Translation.]

Count Tojal to Mr. Clay.

DEPARTMENT OF STATE
FOR THE DESPATCH DEPARTMENT OF FOREIGN AFFAIRS,
June 20, 1850.

In consequence of the important verbal communication you have made to me this day, in regard to the claims pending between the United States and the Portugese government, and about which you require an answer by to-morrow, I proceeded immediately to lay the matter before the other members of the cabinet, endeavoring to repeat what you had proposed to me with the utmost accuracy. Allow me, sir, to remark, however, that the subject or the communication alluded to, is of so grave a character, and that it affects the national interest and national honor so closely, that I cannot avoid begging, in the name of her Majesty's government, that you will be pleased to communicate the same in writing; for inasmuch as by treating a question of such transcendent importance verbally it would be very easy to commit some error, or to misconstrue the exact meaning of certain expressions; and as it is moreover necessary that the matter should be submitted to the Council of State, as the fundamental laws of the monarchy positively require in all such cases, it is indispensable that there should be a written document clear and explicit in its language, such as the government of her Majesty could form a decided opinion upon.

I beg, therefore, that you will be pleased to communicate to me in a note what are the points about which you desire an immediate and decisive answer, in order that I may, without loss of time, submit the same to the consideration of the Cabinet and Council of State, without whose advice it is impossible to give you a comprehensive answer; seeing that verbal propositions of such magnitude and importance, liable as they are from their very nature to be mistaken, can in no way be made the subject of consideration by her Majesty's government.

Waiting for your reply, I avail myself of this occasion to renew to you the assurance of my most distinguished consideration.

May God preserve you.

COUNT OF TOJAL

S.

*Mr. Clay to Count Tojal.*LEGATION OF THE UNITED STATES,
Lisbon, June 20, 1850.

The undersigned, Chargé d'Affaires of the United States of America, in reply to the note of his excellency the Conde de Tojal, dated this day, has the honor to say that his excellency has utterly misconceived the intention and object of the undersigned in the conversation which he had with him this morning at the private residence of his excellency.

The interview which the undersigned sought and had with his excellency, as he expressly stated to him, was a *private* interview, in which he sought to erase from the mind of his excellency certain impressions which he thought he erroneously entertained respecting the affairs pending between the government of the United States and that of her Majesty. Not having made, or intending to make any proposition whatever in that *private* interview, he now makes none in reply to said note.

The undersigned renews to his excellency assurances of the distinguished consideration with which he has the honor to remain his most obedient servant,

JAMES B. CLAY.

To his excellency the CONDE DE TOJAL,
Minister and Secretary of State for Foreign Affairs.

T.*Secretary of State to Mr. J. B. Clay.*DEPARTMENT OF STATE,
Washington, March 2, 1850.

SIR: I have received your despatches to No. 9, inclusive, and I have now to inform you that the President has ordered final instructions to be sent, which will be delivered to you by the commander of the Mediterranean squadron, who will soon be ordered to repair to Lisbon to demand the final reply of the Portuguese government, and to receive you on board and convey you to a place from which you can embark in a steamer for the United States, in the event of an unfavorable answer. Of this proposed measure I have only time by this mail to give you this notice but will forward a duplicate of the instructions referred to, which are now in preparation.

I am, sir, respectfully, your obedient servant,

JOHN M. CLAYTON.

JAMES B. CLAY, Esq.

U.

Secretary of State to J. B. Clay.

[No. 9.]

DEPARTMENT OF STATE,
Washington, March 8, 1850.

SIR: Your despatches to No. 9, inclusive, have been received at the Department of State. * * * * *

In regard to a reference of our claims to an arbiter, which has been indicated, the President has directed me to say that no such course will, under the circumstances, receive his sanction, and this for reasons too obvious to need enumeration.

Although the President is very far from being satisfied with the present state of our claims upon Portugal, as explained in your despatches, yet he has determined to make another effort to draw from the government of Portugal an explicit and final reply to the demands made upon her sense of justice by your predecessor and yourself, under the instructions of this department. This course, the President hopes, will be properly appreciated by Portugal, and be followed by an admission of, and consent to some equitable agreement for the payment of our just demands. If, however, nothing more definite and decisive in character than what has already been advanced, shall in the interim have been offered or agreed upon by Portugal, you will upon the receipt of these instructions address a note to the minister of foreign affairs, acquainting him that though the just expectations of the President have been disappointed, he is still desirous of making another effort, and that you are instructed to demand for the last time an explicit answer on the subject of our claims, and the adoption of immediate measures for their prompt and full adjustment; that the ship-of-war sent to convey these instructions and to receive the answer to them will await a reasonable time for that answer, and if, by or within that period satisfaction is not given, and due provision made for the payment of our citizens, that you are ordered to demand your passports and return to the United States. If none or an unsatisfactory answer be given at the expiration of or before this period, you are hereby instructed by the President's order to quit Lisbon at the specified time; it being understood of course, that these instructions proceed upon the supposition that you shall have made, previous to their receipt, no satisfactory arrangement in regard to our claims under former instructions.

Yours remarks (in No. 9) in reference to such items in the claims as in your judgment could not be fairly insisted upon, are proper, and have received attention. It is our desire and duty to facilitate in every possible way the adjustment of the claims, and an acknowledgment of them as a whole, and not to obstruct their admission by inflexibly insisting upon minor points in particular cases. If special and particular objections be urged in individual cases, so as to prevent or retard a simultaneous arrangement of the whole, you will obtain a formal recognition and allowance of all those, at least, which have been or ought to be admitted without any delay; taking care that from such partial action or settlement no inference shall be drawn to prejudice in any manner or form the remainder. If practicable, it would be still better to fix a round sum to discharge all these claims, leaving the claimants to settle the amounts due them respectively before a commissioner at home. The terms of payment need not interpose any for-

midable difficulty, your principal object being to procure the liquidation of the claims, and after that the most favorable terms that may be practicable. Interest of course is always to be required upon deferred instalments, if that method of payment should be agreed upon. The details of settlement are left to your discretion. Interest on the principal sum due in the Armstrong case, or any other, must of course depend on the circumstances, and is always a subject for fair compromise and amicable arrangement. Invested with ample authority, you have now no occasion to appeal further to this department for its opinion or directions. The claims, together with the principles and evidence on which they rest, furnished by the claimants themselves, are all before you, and after soliciting the interference of their government to procure redress and indemnity for the injuries, damages, and losses they suppose themselves to have sustained, the parties most certainly are bound and must abide by such settlement as this government may be enabled to effect for them. There is one established principle applicable in these and like cases, and governed by it you will demand of the Portuguese government, in every instance, the highest amount of damages which in your judgment a prudent and conscientious man would feel himself justified in asking, if he were prosecuting his own claim.

This despatch will be sent to the Secretary of the Navy, who will issue the proper orders to the commander of the Mediterranean squadron to proceed with it to Lisbon and deliver it into your hands, and there to await the decision of the Portuguese government for the space of twenty days, or even longer if you may deem it indispensably necessary for him to do so, under circumstances which may contingently arise, and of which the department cannot now perceive the existence, or calculate the importance. In this, as well as other matters, much must be left to your own sound discretion. As some time must necessarily elapse before this despatch shall reach Lisbon, an opportunity will be afforded the department to address you again, if anything shall occur here, or be received in the interval from you, to render it necessary. A duplicate of this despatch will be sent to you immediately, by mail, with a duplicate of my last letter of the 2d instant.

I am, sir, respectfully, your obedient servant,

JOHN M. CLAYTON.

JAMES B. CLAY, Esq.

V.

Mr. Clay to Count Tojal.

LEGATION OF THE UNITED STATES,
Lisbon, June 21, 1850.

The undersigned, chargé d'affaires of the United States of America, has been instructed by his government to make known to the government of her most faithful Majesty, that although the just expectations of the President respecting the adjustment of the various claims of citizens of the United States against Portugal have hitherto been disappointed, yet, actuated by an ardent desire for the preservation of harmony and good understanding between the two governments, he is desirous that another effort shall be made to obtain the redress which has so long been sought without success.

The undersigned will pass briefly in review the principal claims which have been urged upon her Majesty's government, for the purpose of showing the efforts which have hitherto been made to procure their settlement, and the result of those efforts.

The first of these claims is that of the owners, &c., of the American privateer, General Armstrong, destroyed by British ships of war in 1814, in the port of Fayal, a possession of Portugal, she being at the time a power neutral between the United States and Great Britain. This claim was first presented for indemnification on the 1st of January, 1815, about which time the government of the United States was officially informed that the government of Portugal had also made demand upon that of Great Britain for the same purpose. It remained in this condition for many years, until on the 17th of February, 1837, it was formally renewed. No written reply having been in the meantime made, it was again urged by note of the 25th of May, 1842. This note was briefly replied to on the 31st of the same month, informing the representative of the United States that the government of her Majesty would proceed without delay to the investigation of the claim. On the 10th of October, 1842, a reply to the demand was again solicited; and on the 12th of November following again postponed. On the 9th of February, 1843, an answer was again requested, and on the same day again postponed. On the 3d of August, 1843, the government of her Majesty replied for the first time to the notes of the 17th of February, 1837, and those which succeeded, arguing against the justice of the claim. Again it was urged on the 28th of June, 1849, and a final decision requested by the 1st of October following; and on the 25th of July, 1849, the government of her Majesty was informed that a delay beyond the said 1st of October to make a definitive answer to the demand, would be construed into a denial of justice.

The second claim, that of James Hall, of the American ship Shepherd, for a sum of money seized on board his vessel in the harbor of Lisbon by the Portuguese authorities, first became the subject of diplomatic correspondence on the 13th of February, 1833, when an execution of the judgment of the Portuguese court of justice in favor of Hall was demanded by the government of the United States. The claim was continually urged by notes of the 13th of April, the 3d of May, and the 7th of June, 1833; of the 31st of August, 1835; of the 21st of January and the 10th of December, 1836; of the 6th of March, the 23d of May and the 22d of June, 1837; of the 28th of March, of the 9th and 12th of July, and the 2d of August, 1838; of the 18th of March and of May 7, 1839; the last of which not having been answered, it was again urged on the 21st of December, 1842. On the 19th of July, 1849, a definitive answer was requested by the 1st of October following; and on the 25th of the same month her Majesty's government was informed that a delay to answer definitively by the said 1st of October would be construed into a denial of justice.

The third claim, that of the owners, &c., of the American ship Miles, for a cargo of whale oil, contracted to be carried by a Portuguese government ship from Mozambique to Boston, but which was sold by the Portuguese authorities, and the proceeds applied to refitting the said government ship, was presented for indemnification by note of the 20th August, 1844. This note was replied to on the 21st of April, 1845, admitting certain items of the claim. It was again urged, by note of the 22d of October, 1847, and no reply having been made to this note, again on the 21st of

March, 1848. No reply still having been made, except to say that the claim was referred to the minister of marine, it was again urged by note of the 9th of November, 1848; and no reply having been made, on the 25th of July, 1849, the government of her Majesty was informed that a delay to answer definitively by the 1st of October following would be construed into a denial of justice.

The fourth claim, that of the owners, &c., of the American schooner Colonel Blum, seized by the Portuguese authorities of the island of Sal, whilst imploring succor in distress, and by the carelessness, incompetency, or wilfulness of the Portuguese officer in charge of her, wholly wrecked and destroyed, was presented for indemnification by note of the 13th of March, 1849, and urged by notes of the 25th July and 17th November following.

The fifth claim, that of the owners, &c., of the American brig "Magoun," seized in the river Angoxa on the east coast of Africa, condemned and confiscated by the Portuguese authorities upon the suspicion that she was engaged in the slave trade, was first brought to the notice of her Majesty's government on the 15th of January, 1849, formally presented for indemnification on the 17th of November, 1849, and the testimony in support of it submitted on the 23d of February last.

Besides these claims, others of less pecuniary importance have been also presented, only one of which (that of the consignees of the brig Long Island for the sum of 19\$566) has been unconditionally admitted, and even this small sum, the undersigned has lately been informed, has been refused to be paid upon the ground that the very parties for whose benefit and in whose name the claim was prosecuted *might not be* the parties entitled to receive it.

Up to the 1st of October, 1849, a definitive answer had been made to but one of the three first mentioned claims, (that of the owners, &c., of the General Armstrong, notice of whose rejection was communicated by note of the 29th September, 1849,) and the government of the United States would have been perfectly justified on the following day to consider, as it had declared it would do, that justice was denied. Since that time the remaining four principal claims have also been rejected by the government of her Majesty as inadmissible, for reasons altogether unsatisfactory and which cannot be successfully maintained; indeed many of the arguments advanced by the different representatives of the United States, and especially those upon the claims of James Hall and of the ship Miles, have never been in any manner replied to.

Although the government of the United States has always considered these claims to be perfectly just, yet, constantly actuated by the strongest desire to maintain amicable relations with Portugal, it has patiently waited whilst months, and in some cases, years have elapsed before answers even could be obtained to the official notes which had been addressed concerning them, it has forborne to take advantage of the position in which it was placed on the 1st of October, 1849, and the undersigned has continued to heap argument upon argument, so long as there was any reason to believe that there was not a fixed purpose to deny all justice. It has now become his duty, in obedience to instructions brought to him by the commodore commanding the United States Mediterranean squadron, conceived by his government in the same spirit, to avoid, if possible, a rupture of friendly intercourse, to demand, for the last time, of the government of her Majesty, whether it will or will not adopt immediate measures for the prompt and

full adjustment of the above mentioned claims. He is further ordered to say that the ship-of-war which has brought him these instructions will wait a period of twenty days for the answer of her Majesty's government, and if, by or within that period, satisfaction is not given and due provision made for the payment of the claims, he is ordered to demand his passports and return to the United States.

The undersigned avails himself of this occasion to renew to his Excellency assurance of his distinguished consideration, with which he has the honor to remain, his most obedient servant,

JAMES B. CLAY.

To his Excellency the CONDE DE TOJAL,
Minister and Secretary of State for Foreign Affairs, &c.

W.

Count Tojal to J. B. Clay.

DEPARTMENT OF STATE FOR FOREIGN AFFAIRS,
July 2, 1850.

In acknowledging the receipt of the note you were pleased to address to me on the 21st of June last, in which enumerating all the American pending claims, you request, according to instructions brought to you by the commander of the United States squadron in the Mediterranean, that the government of her Majesty should state if it will or not adopt immediate measures for the prompt and complete adjustment of said claims, I have the honor to state to you, that in order to arrive at a definite resolution in respect to a subject of so much gravity, it is necessary that you should acquaint me, so soon as it may be possible, with the amount of each of the claims to which you refer in your above mentioned note. I avail myself of this occasion to renew to you the protest of my most distinguished consideration.

CONDE DE TOJAL.

Mr. JAMES BROWN CLAY.

X.

J. B. Clay to Count Tojal.

LEGATION OF THE UNITED STATES,
Lisbon, July 2, 1850.

The undersigned, chargé d'affaires of the United States of America, has the honor to acknowledge the receipt of the note of his Excellency the Conde de Tojal, dated this day, in which his excellency says, that in order to come to a resolution upon an affair of such gravity as that treated of in the note of the undersigned of the 21st ultimo, to which the note of his excellency refers, it is indispensable that the undersigned should make known *with as little delay as possible*, the amount of each one of the claims referred to in his said note.

In reply, the undersigned has the honor to say, that although the claims referred to as stated by the claimants themselves are in almost every case of much greater amount, yet actuated by an ardent desire to arrive at an amicable adjustment and settlement of them; and to demand nothing which he does not believe to be perfectly just, he now specifies the amount for each claim which he believes will be satisfactory to his government, as follows, to wit:

For the claim of the owners, &c., of the General Armstrong, the sum of one hundred and thirty-one thousand six hundred dollars.

For that of James Hall, of the ship Shepherd, the sum of twenty-three thousand one hundred and seventy-one dollars.

For that of the owners, &c., of the ship Miles, forty-two thousand and ninety-eight dollars.

For that of the owners, &c., of the brig Magoun, the sum of twelve thousand dollars.

For that of Carlos Dupuy, two thousand six hundred and six dollars.

For that of the officers and crew of the Magoun, two thousand six hundred and eighty-eight dollars.

For that of the owners, &c., of the schooner Colonel Blum, the sum of eight thousand nine hundred and eleven dollars.

For that of the owners of the whaleship Bolton, two hundred dollars.

For that of the consignees of the brig Long Island, the sum of twenty-one dollars.

For that of the owners of the Ganges, the sum of thirty-two dollars.

The undersigned avails himself of this occasion to renew to his excellency assurances of the distinguished consideration with which he has the honor to remain his most obedient servant,

JAMES B. CLAY.

To his Excellency the CONDE DE TOJAL,

Minister and Secretary of State for Foreign Affairs, &c.

Y.

Count Tojal to Mr. J. B. Clay.

DEPARTMENT OF STATE FOR FOREIGN AFFAIRS,

July 6, 1850.

The undersigned, Minister and Secretary of State for Foreign Affairs, had the honor to receive the note which Mr. James Brown Clay, Chargé d'Affaires of the United States of America, addressed to him under date of the 21st of June last, in which he communicated, that although the expectations of the President of the United States, respecting the adjustment of the various claims of citizens of the said States, had hitherto not been realized, nevertheless, actuated by an ardent desire to the preservation of a good understanding between the two governments, he was willing to make one more effort to obtain the redress which had long been sought without success. Mr. Clay then makes a cursory relation of all the said claims, placing in the first rank that which concerns the privateer "General Armstrong," destroyed in the port of Fayal, of the archipelago of the Azores, by the British squadron under the command of Captain Lloyd, in Septem-

ber 1814, and observes that, said island being a possession of the Portuguese crown, then neutral between the United States and Great Britain, the claim was first set up by the United States on the 1st of January, 1815, but not having been prosecuted for many years it had been renewed on the 17th of February, 1837; Mr. Clay enumerates the notes which were written and adds that, by that of the 25th of July, 1849, the government of her most faithful Majesty was finally informed that any delay in answering definitely that note beyond the 1st of October of that year, would be deemed as a denial of justice. The second claim to which Mr. Clay alludes is that of Captain James Hall, of the American ship "Shepherd," for the seizure of \$10,089 made on board that ship in the port of Lisbon, in 1828, and which was first matter of diplomatic correspondence on the 23d of February, 1833, when the government of the United States claimed the execution of the sentence decreed by the tribunal of the *Ralazao* in favor of Hall. Mr. Clay states all the notes which were addressed to her Majesty's government in respect to this claim and says that, by that of the 25th of July, 1849, the said government was informed that any delay in answering definitely on the subject of this claim, beyond the 1st of October of said year, would also be considered as a denial of justice. That the third claim, for the cargo of whale oil of the American ship "Miles," contracted to be conveyed from Mozambique to Boston in the bark "Real Principe Don Pedro," which oil the Portuguese authorities sold to refit the said bark with the proceeds, was first presented on the 20th of August, 1844, and that various notes had been exchanged on the subject of this claim, when in that of the 25th July, 1849, her Majesty's government was apprised that any delay in answering definitely in reference to this claim beyond the first of October following would equally be considered as a denial of justice. The fourth with reference to the schooner "Col. Blum," seized by the Portuguese authorities of the Isle of Sal, and which was wrecked when sailing to the port of Santa Maria, Mr. Clay observing that the first note in respect to this claim was presented on the 13th of March, 1849, that its decision was urged by notes of the 25th July and 17th November following. The fifth claim mentioned by Mr. Clay is that of the owners, crew and passengers of the brig "Magoun," seized in Rio Angoxa, condemned and confiscated by the Portuguese authorities in Mozambique, on suspicion of being engaged in the slave trade, which claim was first presented to the government of her Majesty on the 25th of January, 1849.

Besides these claims Mr. Clay alludes to others of minor importance which were also presented to her Majesty's government, and he declares that no definitive answer having been given in respect to these claims, except to that of the "General Armstrong," the notice of its rejection being given on the 29th September of that year, and that since this date all the principal claims had been rejected by the government of her Majesty as inadmissible. Mr. Clay considering the omission to answer by the 1st of October, 1849, in which all the said claims should be fully admitted, as a denial of justice, and that the government of the United States would be justified in so considering it also; the undersigned will take the liberty to observe that, duly to weigh some of the said claims, especially those which had reference to occurrences in ultramarine possessions, the predecessor of Mr. Clay was apprised, on the 17th day of said month of October, that documentary evidence was wanting, and that her Majesty's government, far from

denying justice to the government of the United States, always proposed, in the respective answer to each claim, to refer them to arbitrators as the most decorous and adequate mode to resolve these claims. When, however, the undersigned, in his note of the 28th of May last, definitively proposed to refer all the claims without exception, to a like impartial decision, he did not consider himself authorized to accept, and only to insist upon full satisfaction for said claims, without attending to any of the reasons which were deemed and still are judged incontrovertible by her Majesty's government to justify its decisions. Mr. Clay observes that although the government of the United States has considered these claims to be perfectly just, yet actuated by the strongest desire to maintain unaltered amicable relations with Portugal it has patiently waited and forborne to take advantage of the position in which it was placed on the 1st of October, 1849. Mr. Clay continued as he alleges to heap argument upon argument as long as he believed there was not a fixed purpose to deny all justice; but that having now received instructions from his government, conceived in the same amicable and conciliatory spirit as to avoid in every way a rupture of friendly intercourse with the government of her Majesty, it behooved him to urge for the last time the said government to notify to him, if it were willing or not to adopt measures for the prompt and full satisfaction of the said claims, being furthermore ordered to say, that the ship of war which has brought him these instructions will wait a period of twenty days from the date of his said note, to receive an answer from the government of her Majesty, and that if, at the expiration of that period, satisfaction is not given and the promise of payment for said claims, he was likewise ordered to demand his passports and return to the United States. In consequence of this communication, the undersigned had the honor to address Mr. Clay on the 2d instant, requesting him to state the amount of each of the claims to which he alluded, and in his answer of the same day, which the undersigned now has the honor to acknowledge, Mr. Clay states that the amount fixed for each of these claims to be as follows:

Privateer General Armstrong-----	\$131,600
Ship "Shepherd," Captain James Hall-----	23,171
Cargo of oil, ship "Miles"-----	42,098
Brig Magoun-----	12,000
Captain and crew of the Magoun-----	2,688
Passenger Charles Dupuy-----	2,606
Schooner "Colonel Blum"-----	8,911
Whaleship "Bolton"-----	200
Consignee of brig "Long Island"-----	21
Owners of ship "Ganges"-----	32
Total-----	223,327

The government of her Majesty, animated with the same desire which the government of the United States professes, to maintain without interruption relations of good harmony and intelligence between the two countries, yields to the force of circumstances, and without again reverting to the justice or injustice of the claims presented by the government of the United States, and only *pro bono pacis*, offers to pay the said mentioned claims, amounting to \$91,727, according to Mr. Clay's account, with the

only exception of that relating to the privateer, "General Armstrong." In respect to this claim the undersigned cannot deviate from the proposal heretofore made to Mr. Clay, that of so important a claim being submitted to the decision of a third power, and therefore the undersigned will again repeat to Mr. Clay, that the government of her Majesty is ready to refer the claim of the privateer "General Armstrong" to his Majesty the King of Sweden, or to any other power chosen by both governments, this claim being of so different a nature from the others; for as these latter have only reference to Portugal, that of the privateer "General Armstrong" involves a principle of international law, the application of which does not merely regard Portugal, but all other nations, the government of her Majesty could not appear justified before the country, nor in the estimation of public opinion, were it to satisfy that claim without a recourse to the mode which has been proposed. The undersigned does not think it now necessary to develop all the arguments which in various notes he has conclusively proved the injustice of such claim, but he cannot forbear reminding Mr. Clay, that he may repeat it to his government, that the claim of the privateer "General Armstrong" appeared so weakly grounded to the government of the United States, that after presenting it on the 1st of January, 1815, the first note of Mr. Sumter to the Marquis d'Aguiar, it was abandoned by the said government so far as the 13th February, 1837, which was the first note of Mr. Kavenagh. In addition to this, when in 1832 claims presented by the United States were adjusted, and for which, according to the convention then concluded between Viscount Santarem and Mr. Brent, \$71,000 were paid, the profoundest silence was observed by the United States in respect to this claim of the privateer "General Armstrong." The contents of the letter the Secretary of State, Mr. Upshur, addressed on the 10th January, 1844, to the parties interested in the privateer "General Armstrong," communicating to them that all arguments were exhausted to persuade Portugal to admit such claim, "and that the government of the United States could see nothing in the circumstance to justify or warrant it in having recourse to any other weapons," which evidently proves that the same American government of that date perceived no solid foundation to require from the government of her Majesty the amount of a claim that the present government of the United States considers itself justified to obtain in so *peremptory* a manner.

The undersigned does not conceive this to be the proper occasion again to analyze the only argument presented by Mr. Clay to show that the Portuguese government is responsible for the value of the "privateer General Armstrong;" it will be sufficient to state that the principle of inability in the Portuguese government to protect the said privateer against the attack of the British squadron under Captain Lloyd, invoked by Mr. Clay to justify his claim, is neither grounded on reason nor justice, nor is it admissible by international public law. The Portuguese authorities having employed all the means at their disposal to prevent the destruction of the privateer, as is proved by the documents and evidence already produced, were not bound to do more, for no responsibility can attach for the consequences of a fact which it was not possible to prevent.

The government of her Majesty desires to preserve unaltered the relations of friendship which subsist with the government of the United States, and being at the same time disposed never to deny justice where it is due, more than once offered the only decorous and just manner to decide doubtful

questions in respect to law, and in respect to fact; but the government of the United States, possibly having but little reliance in the justice of its claims, did not accept arbitration, and judged it preferable to decide them by its own arbitration and with threats of employing force against a friendly nation, and which cannot repel by force the intended violence against it; in the simple but frank narration of this fact, which is nevertheless important, Mr. Clay will find the answer to the accusation contained in the note he addressed to her Majesty's government, of having denied justice in respect to the claims in question. Her Majesty's government, besides the arguments contained in the notes formerly addressed to the government of United States, finds its judgment and the manner of weighing the question of the privateer General Armstrong, strengthened with the opinion of her Britannic Majesty's government, which has always deemed this claim of the government of the United States unjust. The subsisting relations between her most faithful Majesty's government and that of her Britannic Majesty's, oblige the undersigned to communicate to the British government all that has taken place, and to cause the prosecution of the claims which were, at one period, presented by the Duke of Palmella to her Britannic Majesty's government, and which were not followed up in consequence of the abandonment by the government of the United States, for the space of twenty-two years, of the claim of the privateer General Armstrong, which gave rise to the belief that this claim was presented on some occasions merely *pro forma*, than through conviction of its justice. These circumstances should also induce Mr. Clay to represent to his government that it would be flagrant injustice not to separate from the other claims that of the privateer General Armstrong, in order to submit it to the decision of a third power chosen by the two governments.

In view, therefore, of the reasons herein mentioned, which the undersigned trusts will be received by Mr. Clay with a sincere desire to maintain, without interruption, the relations of perfect intelligence and harmony between the two governments, the undersigned will conclude by repeating to Mr. Clay the assurance of her Majesty's government's compliance to promptly satisfy all the pending claims, with the exception of that relating to the privateer General Armstrong, the decision of which, in accordance with the proposal now renewed, should be referred to a third power, chosen by both governments.

The undersigned renews on this occasion to Mr. James Brown Clay, the protests of his most distinguished consideration.

CONDE DE TOJAL.

Z.

Mr. J. B. Clay to Count Tojal.

LEGATION OF THE UNITED STATES,
Lisbon, July 7, 1850.

The undersigned, chargé d'affaires of the United States of America, has the honor to acknowledge the receipt of the note addressed to him by his excellency, the Conde de Tojal, dated on yesterday, and received to-day, in which his excellency, on the part of the government of her most faithful Majesty, in reply to the note of the undersigned of the 21st ultimo, pro-

posing to pay, "without entering anew into a discussion of their justice or injustice," all the other claims referred to in the said note of the undersigned, amounting to \$91,727, excepting that of the owners, &c., &c., of the privateer General Armstrong, which his excellency again proposes to refer to arbitration, and suggests as the arbiter his Majesty the King of Sweden. In his said note, his excellency enters into an argument respecting the claim of the General Armstrong, all the grounds of which the undersigned conceives to have been heretofore fully and elaborately discussed. The only new matter brought forward by his excellency, is a private letter of Mr. Upshur, to which he refers and quotes as evidence to show that the government of the United States, by not having urged the claim between 1815 and 1837, intended to abandon it. The reason of the non-presentation of the claim during that time was long since made known to the government of her most faithful Majesty, both by Mr. Hopkins, the predecessor of the undersigned, and by himself: that reason was the disinclination of the government of the United States to urge the claim upon Portugal, convulsed, as she almost continually was, by intestine difficulties. This reason is fully sustained by the letter of Mr. Upshur referred to by his excellency, which contains not one word against the justice or right of the claim.

The undersigned does not intend further to argue this claim, but he must observe, as he has repeatedly before observed, that he conceives the law and the facts of the claim to have been fully admitted by the government of her most faithful Majesty, if not in direct terms, by fair and necessary inference. As to the remark of his excellency "that the government of the United States, confiding, perhaps, little in the justice of her claim, rejecting arbitration, and judged it preferable to arbitrate upon them herself, and with threats of employing force against a friendly nation who could not repel by force the violence intended," &c, &c., the undersigned feels it proper that he should say, that he is not aware that his government has made use of any threats of force whatever, and which certainly cannot be found in any note which he has had the honor to address to the government of her most faithful Majesty; it is well known, moreover, that his government never even intimated an intention to withdraw her representative from the court of her most faithful Majesty, until she had during years exhausted all the means of ordinary negotiation, and become fully satisfied that justice was hopeless by those means.

In answer to the proposition of his excellency, the undersigned has the honor to say, that the instructions of his government do not allow him to entertain any proposition which has not for its object the adjustment and final settlement of all the said claims without exception; he therefore declines to accede to the proposition of his excellency as above stated, to pay all the other claims except that of the General Armstrong, and to refer it to arbitration. The undersigned desires to say, that he is not aware of the existence of the slightest objection on the part of his government to his Majesty the King of Sweden, as an arbiter upon any subject which her duty to her citizens and her own sense of justice and propriety might induce her to submit to that mode of settlement.

The undersigned avails himself of this occasion to renew to his excellency assurances of the distinguished consideration with which he has the honor to remain his most obedient servant,

JAMES B. CLAY.

To his Excellency the CONDE DE TOJAL, &c., &c., &c.

A A.

[Translation.]

Count Tejal to Mr. J. B. Clay.

DEPARTMENT OF STATE
FOR THE DESPATCH OF FOREIGN AFFAIRS,
July 10, 1850.

The undersigned, minister and Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of a note which Mr. James Brown Clay, chargé d'affaires of the United States of America, addressed him on the 7th instant, in reference to the reply given by the undersigned on the 6th of the same month to Mr. Clay's note of the 21st of last June, and in which the undersigned had informed him that her Majesty's government had consented to a full settlement of all the pending American claims to the amount of ninety-one thousand seven hundred and twenty-seven dollars, with the sole exception, as he stated, of the American privateer General Armstrong, which he again proposed should be submitted to the decision of his Majesty the King of Sweden, or to any other power which might be selected by the two governments. In this note Mr. Clay says that his reasons for persisting in his convictions as to the validity of the aforesaid claim had been fully discussed, and that the only consideration which prevented its being followed up from the 1st of January, 1815, until the 13th of February, 1837, was that the government of the United States had no desire to drive the Portuguese government to immediate action on the subject, in consequence of its having been almost constantly involved, as Mr. Clay alleges, in domestic feuds.

The undersigned, however, begs leave to remark to Mr. Clay that such an argument as this can have no force whatever, when the fact is taken into consideration that from 1815 to 1820, and from 1823 till 1826, this kingdom was in the enjoyment of perfect order and tranquillity; and that her Majesty's government was then as it is now, fully able to discuss the question, (more so than in 1837,) if the American government had desired to bring it up. Mr. Clay adds that the instructions he has received from his government will not permit him to accept any proposition which does not aim at a final and complete settlement of all the claims, without any exception whatever, and that he rejects, on this account, the proposition made to him by the undersigned.

It becomes then the painful duty of the undersigned to express to Mr. Clay the deep concern her Majesty's government feels at this declaration; under the existing circumstances the aforesaid government has no other means of obtaining proper justice, except by appealing *directly* to the government of the United States, with the same proposition that the undersigned made to Mr. Clay in his note of the 6th instant, in the hope that when her Majesty's government shows itself willing to admit, as in fact it has admitted all the other American claims, a single exception may be allowed in regard to the claim of the owners of the privateer General Armstrong, in order that the same may be submitted to the decision of a third power, to be selected by mutual consent. The undersigned has been gratified, at the same time, with the assurance conveyed to him in Mr. Clay's note now under consideration, that it had never come to his know-

ledge that the government of the United States had ever used threats of any kind against the Portuguese government—threats which he (Mr. Clay) had on no occasion employed throughout the whole of his previous correspondence with her Majesty's government.

The undersigned has therefore the satisfaction of knowing that neither in the message of the President of the United States, that portion of it which relates to the affairs of Portugal, nor in the instructions which Mr. Clay received from his government, directing him to ask for his passports, in the event that no definite arrangement should be made in relation to all the claims now pending, was there anything intended to convey the impression that the government of the United States would employ forcible means against the Portuguese government in order to accomplish its object.

The undersigned renews to Mr. James Brown Clay, with this opportunity, the assurances of his most distinguished consideration.

THE COUNT OF TOJAL.

BB.

J. B. Clay to Count Tojal.

LEGATION OF THE UNITED STATES,
Lisbon, July 11, 1850.

The undersigned, chargé d'affaires of the United States of America, has the honor to acknowledge the receipt of the note of his Excellency the Conde de Tojal, dated the 10th instant, which communicates to him the final answer of her most faithful Majesty's government to the demand made upon its sense of justice by the undersigned, on the part of the government of the United States, in his note of the 21st ultimo.

In his said note the undersigned had the honor to inform his Excellency that if by or within twenty days from its date satisfaction were not given, and due provision made for the payment of the claims therein mentioned, he was ordered by his government to demand his passports and to return to the United States.

By note of the 6th instant, his Excellency, on the part of the government of her most faithful Majesty, replied to this demand by a proposition couched in the following language: "The government of her Majesty, animated by the same desire which is professed by the government of the United States, to maintain without interruption the relations of good harmony and intelligence between the two countries, yielding to the force of circumstances, and without entering anew into the question of the justice or injustice of the claims presented by the government of the United States, and solely for the preservation of peace, the government of her most faithful Majesty is ready to pay the mentioned claims to the amount of \$91,727, according to the account of Señor Clay, with the sole exception of the first to which he alludes—that of the privateer General Armstrong. As to this claim, the undersigned cannot depart from the proposition which, in this respect, he has already made to Señor Clay, that so important a claim should be submitted to a third power," &c., &c. This proposition does not admit the justice of any single one of the claims to which it refers, but merely states, as above quoted, that the government of her most faithful

Majesty is willing, *for the sake of peace, impelled by the force of circumstances, and without considering their justice or injustice*, to pay some of them.

The undersigned has the honor to repeat to his Excellency that all the said claims are believed by his government to be entirely just, and none more so than that of the privateer General Armstrong. He, therefore, by his note of the 7th instant, had the honor to say to his Excellency, that his instructions did not allow him to entertain any proposition which has not for its object the adjustment and final settlement of every claim, without exception. The note of his Excellency of the 10th instant, is in reply to the said note of the 7th; and as the undersigned has above had the honor to observe, he understands it to be the final answer of her Majesty's government to the demand of the government of the United States. In the said note his Excellency says: "It becomes then the painful duty of the undersigned to express to Mr. Clay the lively sentiment which animates the government of her Majesty in presence of such declaration, [his rejection of the proposition contained in his Excellency's note of the 6th instant;] and under these circumstances, no other means remain to the said government to obtain justice except to refer *directly* to the United States government the same proposition made to Mr. Clay by the undersigned in his note of the 6th instant, that all the other American claims be admitted, as they were actually by the government of her Majesty, except only that of the owners of the privateer General Armstrong, in order that it be submitted to the decision of a third power of mutual choice."

In conformity, then, with the instructions of his government, as made known to his Excellency in the said note of the 21st ultimo, however painful it may be personally to him, it has now become the duty of the undersigned to make formal demand for his passports, in order that he may return to the United States.

He has the honor to say to his Excellency, that it will require the period of one week to enable him to make disposition of his private effects, at the expiration of which time he expects to embark on board one of the ships of his country, now in the Tagus.

The undersigned renews, &c., &c.

J. B. CLAY.

His Excellency the CONDE DE TOJAL, &c., &c.

C.C.

[Translation.]

Count Tojal to Mr. James B. Clay.

DEPARTMENT OF STATE

FOR THE DESPATCH OF FOREIGN AFFAIRS,

July 13, 1850.

The undersigned, Minister and Secretary of State for Foreign Affairs, has had the honor to receive the note which Mr. James Brown Clay, Chargé d'Affaires of the United States of America, addressed him on the 11th instant, asking for his passports, with a view of returning to the United States.

Mr. Clay has decided upon taking this extraordinary step in consequence of the Portuguese government adhering resolutely to its proposition to submit the claim of the privateer General Armstrong to the decision of a third power, which shall be selected by both governments. Mr. Clay has found nothing worthy of his consideration in the remarks made by her Majesty's government, when it endeavored to show the justice of its course in proposing to pay all the claims that have been presented, according to Mr. Clay's account, and upon the terms expressed in the note which the undersigned had the honor of addressing him on the 6th instant, with the *sole exception* of the aforesaid claim of the privateer General Armstrong—not for the purpose of avoiding payment of the same, if due, but in order to submit it to the decision of a third power, because there is a principle of international law involved in the claim which cannot be altered at the mere option of any government.

The undersigned cannot avoid expressing to Mr. Clay the regret experienced by her Majesty's government on receiving the note in which the representative of the government of the United States makes so formal a demand for his passports—a government whose friendship Portugal has preserved unaltered throughout all times, and which, even now, she was so desirous to maintain that she did not hesitate in showing herself ready to pay all the claims that had been presented, with the exception of that particular one concerning the privateer General Armstrong, for reasons already explained.

No government can pretend to *infallibility* in regard to its own opinions; and when a question presents itself between two friendly governments, otherwise involving differences of opinion as to points of fact and of law, it must be acknowledged that a refusal to submit the matter to *arbitration*, as proposed by the weakest party, is calculated to produce the impression that there are doubts as to the justice of the claim presented by the strongest.

The undersigned entertains no doubt as to the truth of what Mr. Clay has stated in his note in reference to his government being perfectly convinced of the justice of the claims that have been presented; but, inasmuch as the Portuguese government is equally convinced of the rectitude of its course in having always resisted the claim of the privateer General Armstrong, the dictates of justice and of reason forbid the rejection of the only impartial and honorable means within reach for setting this grave question at rest.

In compliance with Mr. Clay's request, the undersigned, although seriously grieved at the occurrence, has the honor of enclosing to him his passports; Mr. Clay being, nevertheless, at perfect liberty to continue his residence in Portugal as long as he shall deem it either convenient or agreeable. The undersigned avails himself of this opportunity to renew to Mr. James Brown Clay, the assurances of his most distinguished consideration.

COUNT OF TOJAL.

D D.

[Extract.]

*Mr. Webster to Mr. J. B. Clay.*DEPARTMENT OF STATE,
Washington, August 23, 1850.

SIR: I have the honor to acknowledge the receipt of your despatches to No. 27, dated the 23d ultimo, in which you enclose a copy of your last note to the Count de Tojal, giving notice of your departure from Lisbon, &c.

Your communications have been duly submitted to the President, who, after mature consideration of the whole subject, deems it advisable to accept the proposition offered in the note addressed to you by the Count de Tojal, on the 6th of July last—to pay the several claims preferred by this government against that of Portugal, with the exception of the claim in the case of the General Armstrong, which it is proposed to refer for decision to the King of Sweden, or to any other friendly power chosen by the mutual consent of the governments of the United States and Portugal.

Under these circumstances I am directed to inquire whether it would be entirely convenient and agreeable to you to return to Lisbon for the purpose of concluding the proposed arrangement. * * * *

I am, sir, respectfully, your obedient servant,

DANIEL WEBSTER.

JAMES B. CLAY, Esq.

E E.

[Extract.]

Mr. Webster to Mr. Chas. B. Haddock.

[No. 2.]

DEPARTMENT OF STATE,
Washington, January 7, 1851.

SIR: * * * The papers and documents relating to the claims are now in this department, having been sent hither by Mr. Clay, under instructions from his government. These may be necessary to whomsoever the duty of framing and concluding the convention shall be entrusted; and embarrassments might ensue if you should now immediately proceed to Lisbon, taking these papers and documents with you, and before your arrival there the Portuguese government should have signified its wish that the convention should be agreed upon here by Mr. De Figanière and this department. In the hope that we shall hear from the Portuguese government through Mr. De Figanière at an early day, it is thought expedient to instruct you to postpone your departure, and to await the further orders of this department.

I am, sir, respectfully, your obedient servant,

DANIEL WEBSTER.

CHAS. B. HADDUCK, Esq., &c., &c.
Washington.

F F.

Mr. Webster to Mr. Charles B. Haddock.

[No. 3.]

DEPARTMENT OF STATE,

Washington, February 24, 1851.

SIR: Having this day come to an agreement with the minister resident of Portugal as to the terms of a convention for the settlement of our claims against his government, which will be submitted at once to the Senate, I have to request that you will repair to Washington without delay, to receive your final instructions previous to proceeding to Lisbon.

I am, sir, &c., &c.,

DANIEL WEBSTER.

CHAS. B. HADDUCK, Esq.,

*Chargé d'Affaires of the U. S. for Portugal,
now in New York.*

G G.

[Extracts.]

Mr. Webster to Mr. Charles B. Haddock.

[No. 4.]

DEPARTMENT OF STATE,

Washington, March 19, 1851.

SIR: The convention providing for the payment and settlement of the claims of American citizens against the government of Portugal, to which I referred in my letter to you of the 24th ultimo, was agreed upon and concluded on the 26th ultimo, between Mr. De Figanière é Morão and myself, and submitted on the 28th ultimo to the Senate, which advised and consented to its ratification on the 7th instant.

I commit to your care a ratified copy of this convention, and a special power from the President authorizing you to move the exchange of the ratifications, which, by the stipulations of its seventh article, is to take place within four months after its date, or sooner if possible. If no difficulty arise, and none is anticipated, you will send home the ratified treaty by the vessel, or some safe conveyance, without resorting to a special messenger, unless any circumstances should in your judgment render the latter course necessary or expedient. * * * * *

By a resolution, the House of Representatives called, on the 7th August last, for the correspondence between the two governments on the subject of claims. The papers in answer to the resolution have been copied, but were not communicated in consequence of the pending negotiations, which resulted in the conclusion of the convention. They will be sent in at the next session, and a copy of them will be transmitted to you as soon as they are printed. * * * * *

You know the sincere and unalloyed gratification which was felt by this government upon the late adjustment of the difficulties that had so long

embarrassed its intercourse with Portugal, and you will express these sentiments on all proper occasions. * * * *

I am, sir, &c.,

DANIEL WEBSTER.

CHARLES B. HADDUCK, Esq., &c., &c.

HH.

[Extract.]

Mr. Webster to Mr. Charles B. Haddock.

[No. 5.]

DEPARTMENT OF STATE,
Washington, March 20, 1851.

SIR: I have just had a conference with Mr. De Figanière é Morão, and it has resulted in my determining to yield to his wishes, that the papers in the case of the General Armstrong may be transmitted to your charge, and instructions given to sign the protocol with the plenipotentiary whom her most faithful majesty may appoint for the purpose of selecting an arbiter. I accordingly transmit herewith a draft of a protocol which has been submitted to Mr. De Figanière and has received his sanction, and a full power from the President to sign the same at Lisbon, and do everything in the premises that may become necessary.

The protocol is in the nature of an instruction and explains itself; but it may be well to remark that the points for the consideration and decision of the arbiter have reference both to the amount of the claim and its validity, and that, in the event of any circumstance occurring which should prevent the arbitrament and decision of the President of the French republic, in that case it will become your duty, and you will take all similar and proper measures in conjunction with the Portuguese government, to cause a speedy reference of the whole matter to be made to his majesty the King of Sweden.

As soon as you shall have exchanged the ratifications of the convention and signed the protocol, you will acquaint the United States minister at Paris or the chargé d'affaires at Stockholm with your proceedings, who will be instructed to present the subject to the President or the King, as the case may be, and to inform you of his answer. The same course will be pursued by the Portuguese government.

When the consent of the arbiter, whichever of the two it may be, shall have been obtained, you will proceed to carry into execution the stipulation of the third article of the convention, viz: to compare and authenticate, jointly with the Portuguese government, the copies therein specified. You will understand, of course, that these copies are limited to such communications as have passed between the American legation and the Portuguese government at Lisbon, and between this department and the Portuguese legation in Washington, joined with like compared and authenticated copies of the second and third articles of the convention, and of the protocol. The original notes of the Portuguese government to the United States representative, now placed in your possession, and the original notes of the United States representative being already in the foreign office in Lisbon, the act of comparison and authentication, as it concerns these, will be

quite simple ; and equally so in regard to the other portion, with copies of which you are now furnished, to compare with those forwarded to his own government by the Portuguese minister resident here.

The copies thus jointly verified and authenticated by yourself and the Portuguese plenipotentiary will be forwarded by the Portuguese government to their legation at Paris or Stockholm, as the case may be, to be presented to the arbiter by the representative of the United States and of Portugal. This arrangement is in accordance with suggestions made by Mr. De Figanière to this department.

I am, sir, respectfully, your obedient servant,

DANL. WEBSTER.

Mr. CHARLES B. HADDUCK.

II.

[Extracts.]

Mr. C. B. Haddock to the Secretary of State.

AMERICAN LEGATION, *Lisbon*, June 28, 1851.

SIR : I have the honor to inform you that on Monday, the 23d instant, by appointment of the minister of State for Foreign Affairs, Antonio Aluizio Jewis d'Atonquia, I met his excellency at the department of foreign affairs at one o'clock p. m., and having, in conjunction with him, carefully compared and verified the ratifications of the convention concluded in the city of Washington on the 26th day of February last, by the Secretary of State of the United States of America and the minister resident of her most faithful Majesty at Washington, in relation to certain claims of citizens of the United States upon the government of Portugal, proceeded, on that day, to the exchange of ratifications, according to my instructions, and in the usual form. * * *

Immediately upon the exchange of ratifications, the minister of Foreign Affairs introduced the subject of the reference of the case of the brig General Armstrong to our arbiter, and proposed an early date for the necessary preliminary arrangements.

The provision of the treaty in regard to this claim will, I have no doubt, be carried out with the same promptness and good faith, on the part of her Majesty's government, which have been exhibited in the ratification of the treaty itself. * * *

CHARLES B. HADDUCK.

KK.

[Extract.]

Mr. Webster to Mr. Charles B. Haddock.

[No. 6.]

DEPARTMENT OF STATE,

Washington, July 12, 1851.

SIR : In my despatch of the 20th March last, you were instructed, after having signed the protocol, as provided for by the stipulations of the con-

vention with Portugal, to compare and authenticate, jointly with the Portuguese government, copies of all the correspondence which has passed between the American legation and the Portuguese government at Lisbon, and between this department and the Portuguese legation in Washington, respecting the claim of the "General Armstrong,"—with a view of submitting them, together with the papers, to the arbiter. To provide, however, against the omission of any important part of the earlier portion of the correspondence, I mean that which passed in 1814 and 1815, in Rio Janeiro, where the court of Portugal at that time resided, and which it could not have been intended to exclude, I transmit to you herewith a printed copy of the correspondence, as communicated to Congress on the 15th December, 1845.

* * * * *

I am, sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

C. B. HADDUCK, Esq., &c., &c., *Lisbon*.

L L.

[Extract.]

Mr. C. B. Haddock to the Secretary of State.

UNITED STATES LEGATION,
Lisbon, July 17, 1851.

SIR: I have the honor to inform you, that on the 9th inst. I met her Majesty's Minister of State and Secretary for foreign affairs at the Foreign office, for conference upon the subject of the protocol.

Two slight alterations in the form sent to me from the Department of State were suggested by his Excellency, to which I did not think it necessary to object; one, making it to appear *more clearly* that the arbiter was to decide upon *the amount* as well as validity of the claim; and the other, providing for duplicate instead of "triplicate" copies of the protocol. For the last mentioned alteration I could see no reason, unless one is to be found in the difficulty of furnishing the arbiter with a *single* copy, in which neither party should appear to have the pre-eminence. In European diplomacy an importance may be attached to the order of the signatures, which our western habits of thinking upon such matters might not suggest. It is proposed that each of us shall forward to the arbiter a distinct and properly authenticated copy of the protocol. With these alterations the instrument was signed and sealed by us on the day of the conference.

I have informed our minister at Paris of these proceedings.

* * * * *

CHARLES B. HADDUCK.

M M.

Acting Secretary of State to William C. Rives, Esq.

[No. 33.]

DEPARTMENT OF STATE,
Washington, September 17, 1851.

SIR: I transmit herewith a printed copy of a convention for the payment and settlement of certain claims of American citizens against Portugal, which has been recently concluded between the United States and Portugal. The second and third articles of this convention relate to the submission of the case of the privateer General Armstrong to arbitrament; and the arbiter selected in the first place, as you have been already informed by Mr. Hadduck, the Chargé d'Affaires of the United States in Lisbon, is the President of the French republic.

The object of this despatch is to call your attention to the subject, and to instruct and authorize you to carry out the provisions of the convention and protocol, formal copies of which, under the directions of this department, have already been transmitted to you by Mr. Hadduck, together with all the necessary papers connected with the claim in question.

I am, sir, respectfully, your obedient servant,

W. S. DERRICK,
Acting Secretary.

WILLIAM C. RIVES, Esq., &c., &c.

N N.

[Extract.]

*Mr. W. C. Rives to the Secretary of State.*LEGATION OF THE UNITED STATES,
Paris, October 16, 1851.

SIR: The despatch (No. 33) from the Department of State was received a few days ago. I lost no time in making arrangements with the minister of Portugal to address concurrent communications to the minister of foreign affairs, informing him of the choice which had been made by the two powers of the President of the French republic as arbiter, under the convention of the 26th of February last, and expressing, in the name of the two governments respectively, the hope that the President would assume the office.

* * * * *

W. C. RIVES.

O O.

[Extract.]

LEGATION OF THE UNITED STATES,
Paris, November 5, 1851.

SIR: I enclose herewith a copy of a letter received a few days ago from the minister of foreign affairs, informing me that the President of the repub-

lic accepts the office of arbiter tendered to him by the United States and Portugal, under their convention of the 26th of February last, and expressing, in the name of the President, "the high satisfaction he feels in acting as the common friend of two nations with which France is united by sentiments of sincere and lasting amity." * * *

W. C. RIVES.

PP.

[Extract.]

Mr. De Figanière é Morão to the Secretary of State.

WASHINGTON, November 9, 1849.

DEAR SIR: * * * * * Allow me to lay before you in an informal manner, the enclosed short exposé of the case of the General Armstrong, being one of the claims included in the demand made by the American chargé in Lisbon for an answer by a certain day.

You will please observe that I am not instructed, nor do I anticipate being directed to discuss the merits of any of the American claims, nor, indeed, would it now be in my power to do so, having no knowledge of some, a very imperfect one of others, and had it not been for the Senate's publication of the documents in respect to the General Armstrong, which I yesterday procured, I could not have prepared the within paper, which is thus informally submitted for your perusal, solely for the purpose of facilitating a good understanding between the two countries, which it is my duty to endeavor to maintain, and specially in respect to these claims, some others of which may, perchance, be inadmissible as this, as stated years ago by my government, and which I flatter myself is again conclusively shown in the enclosed paper.

I have the honor to be, with high consideration, &c., &c.,

DE FIGANIERE.

HON. JOHN M. CLAYTON, &c., &c.

The privateer brig General Armstrong, Captain Reid, entered the port of Fayal on the 26th day of September, 1814, at about noon. She was received with all courtesy in that neutral friendly port. On the evening of that day a British naval division of three men-of-war entered the same port at about 7 o'clock p. m. "Soon after," says Captain Reid's protest, made on the following day, "some suspicious movements on their part, indicating an intention to violate the neutrality of the port, induced Captain Reid to order his brig to be warped in shore close under the guns of the castle; that, in the act of doing so, four boats approached his vessel filled with armed men. Captain Reid repeatedly hailed them and warned them to keep off, which they disregarding, he ordered his men to fire on them, which was done, and killed and wounded several men." After this the British returned with a greater force and ultimately took and destroyed the General Armstrong, which the Americans had abandoned. Finally, Cap-

tain Reid "protests against the commander of said British squadron, and also against the government of Portugal from their *inability* to protect and defend the neutrality of their port and harbor," &c., &c.

The particulars of this protest (which is the basis of the claim) are corroborated by other documents; and the question is, how does the case stand, as between Portugal and the United States on the one side, and these powers in respect to the other belligerent, Great Britain?

It is admitted that Portugal exerted all its power at the time to prevent the conflict; therefore, far from being liable for the loss of the General Armstrong, she had reason to complain of Captain Reid, who, as himself avows, opened the hostilities; his allegation that he so commenced them from *suspicious* movements (which he does not qualify) on the part of the British, cannot destroy the fact of the overt act, the first fire, nor the opposite allegation (equally unqualified,) made by the British commander, that his boats had no open hostile intention.

Portugal, who treated both belligerents upon the same footing in its ports, and did not deviate from the neutrality, was not, however, bound to have every harbor and roadstead of its very extensive colonies, especially at that time, so fortified as to enforce her neutrality upon any and every belligerent force which might be inclined to disregard it. Portugal, therefore, was the victim of both belligerents; had and still has a right to demand satisfaction for the violation of her sovereignty and neutrality, and for redress of the injury inflicted in consequence. On the part of Great Britain this appears to have been complied with; but from the United States, notwithstanding the General Armstrong commenced the deadly conflict, no excuse has been received for this wrong, and far from contributing to redress the injury done to the town and inhabitants, their government is, on the contrary, urged by representations of the claimant, requiring of Portugal to pay for the loss of the General Armstrong!

No principle of the law of nations, and much less as held in the United States—as will be shown hereafter—would condemn a neutral power to make good the loss and damage sustained by one of two belligerents, who in a defenceless spot—it might have been in the cove of a fishing hamlet—chose to offend the sovereignty and violate the neutrality of the place.

After a full investigation of the matter, the Portuguese government, in reply to sundry notes of the American legation in Lisbon, in respect to this claim, rejected it on the 3d of August, 1843, on the grounds above stated, confirming by that note what had been *verbally* communicated in 1837 to Mr. Kavanagh, "that the claim appeared inadmissible;" nor can it be expected that Portugal will deviate from so plain and just a course.

The government of Portugal had reason to think that this claim would never have been renewed; and, indeed, the American government itself had stated, long after the receipt of that note, on the 10th of January, 1844, to the chief, and perhaps the only claimant, that "it was unwilling, under all the circumstances, to renew the application."

But, without losing sight of what is above stated and considered sufficient to exempt Portugal from all blame in and liability for the destruction of the General Armstrong, it will be well, nevertheless, to examine what were her duties and liabilities as a neutral power, in the untoward case of the 26th and 27th September, 1814, even conceding the attack to have been commenced by the British.

It cannot be contended by the United States that Portugal was bound to

act otherwise, in this case, than they would themselves have acted in a similar case. The 25th article of the treaty of 1794 between Great Britain and the United States, stipulated that (Wheaton's Elements of international law, part iv, chapter iii, sec. 12) "neither of the said parties shall permit the ships or goods belonging to the citizens or subjects of the other to be taken within cannon shot of the coast, nor in any of the bays, ports or rivers of their territories, by ships of war or others having commissions from any prince, republic or State whatever. But in case it should so happen, the party whose territorial rights shall have been violated *shall use his utmost endeavors to obtain from the offending party full and ample satisfaction for the vessel or vessels so taken, whether the same be vessels of war or merchant vessels.*" Previous to this treaty with England, the United States were bound by treaties with three of the belligerent nations, (France, Russia and Holland,) to protect and defend "by all the means in their power," the vessels and effects of those nations in their ports or waters, or on the seas near their shores, and to recover and return the *same* to the right owner when taken from them. But they were *not bound* to make compensation if *all the means in their power were used*, and failed in their effort. Though they had, when the war commenced, no similar treaty with Great Britain, it was the President's opinion that they should apply to that nation the *same rule*, which, under this article, was to govern the others above mentioned. Wheaton then states that the authority, whose duty it is to inquire into captures made within neutral territory, and in section thirteen goes on to say: "It has been judicially determined that this peculiar jurisdiction to inquire into the validity of captures made in violation of the neutral immunity, will be exercised *only for the purpose of restoring the SPECIFIC PROPERTY* when voluntarily brought within the territory, and does not extend to the infliction of vindictive damages, as in ordinary cases of maritime injuries."

This is the doctrine which rules in the United States. It was followed by Portugal in the case in question; "all the means then in her power were used" to prevent the capture of the "General Armstrong," and as this vessel was destroyed, it was not in her power to recover the property, and make restitution to the rightful owners.

Q Q.

[Extract.]

Mr. De Fighanière é Morão to the Secretary of State.

NEW YORK, March 12, 1850.

* * * In respect to the pending American claims, Count Tojal tells me, "as his Majesty's government is resolved, with all the despatch its other many occupations will permit, to give due attention to the American claims, you can so signify to that government, with the assurance that the present administration is desirous to do full justice; but that, in the short period it has been at the head of the affairs of State, it has not been possible to collect all the necessary information in reference to these matters, or to investigate them with that attention that their nature and importance demand."

When in Washington, I submitted to you an extract of a former despatch, informing me that the case of "James Hall," had been laid before the appropriate section of the council of State; Count Tojal now informs me: "that the opinion of the said section would be shortly received and laid, together with all claims, before the ministerial cabinet council."

* * * * *

DE FIGANIERE.

HON. JOHN M. CLAYTON, &c., &c.

R R.

J. C. de Figanière é Morão to Mr. Clayton.

NEW YORK, March 25, 1850.

DEAR SIR: The "Niagara" has brought in government despatches for this legation, which does not surprise me, the minister of foreign affairs' presence being constantly required in the chambers; besides, the chief clerk of the department, after an illness and constant confinement for three months, had died about the middle of February. His illness has, no doubt, retarded the business of that department. For many years the deceased had held that post, with credit to himself and full confidence of them any ministers who have succeeded each other; and I know that the American claims, among other important affairs, were entrusted to him. This will account for the delay in replying to Mr. J. B. Clay. I have, however, a private letter from a reliable source, which informs me, under date 28th ultimo, that "the papers concerning the American claims, with their several explanatory reports, were laid by the minister of foreign affairs before his colleagues in council, and a communication will shortly be made to the American chargé." This, you will perceive, agrees with the statement made in my letter of the 12th instant; and I now have the pleasure to make this further statement, for your *private information*.

I have the honor to be, with much respect and esteem, honorable and dear sir, your obedient servant,

DE FIGANIERE.

HON. JOHN M. CLAYTON, &c., &c.

S S

The Commander J. C. de Figanière é Morão to the Secretary of State.

HER MOST FAITHFUL MAJESTY'S LEGATION,
Washington, April 27, 1850.

Sincerely disposed to attend to the expressed wishes of the American government, and urged by its representative at Lisbon, the Queen's government has lately re-examined certain old claims of American citizens, which had years ago been acted upon, decided as seemed most just to the Portuguese government, and such decisions duly communicated, through the American legation at Lisbon, to the government at Washington.

The first of these two claims appears to be for compensation to Captain Reid and his crew for the destruction of their seven-gun privateer brig, "General Armstrong," manned by ninety men, while lying at anchor in the neutral port, at the island of Fayal, by an English squadron of large force, in September, 1814.

The second is that of Captain James Hall, of the ship "Shepherd," for a certain quantity of foreign coin, which the revenue officers of the port of Lisbon had seized in 1828, as forfeited, in accordance with the then revenue laws and regulations of the kingdom.

After twenty-three years of uninterrupted silence—from the time when first Mr. Sumpter, the American minister at the court of Rio Janeiro, expressed the hope that the King of Portugal would claim from the British government indemnification for the loss of the "General Armstrong,"—the case was brought before the Portuguese government by Mr. Kavanagh, the American chargé d'affaires at Lisbon, in the year 1837.

So unexpected a demand, and the long period which had elapsed since the occurrence had taken place, required much time and attention to collect and examine all the documents, and to ascertain all the circumstances of the case.

On a thorough and mature investigation of the matter, and of the arguments presented by the American legation, her Majesty's government judged the claim inadmissible, and so informed the American chargé, with the facts that led to that conclusion, in the communication addressed to him on the 3d of August, 1843.

The Portuguese government had reason to believe the case disposed of to the satisfaction of the American government, no reply having been made to that note; and, indeed, there is unmistakable evidence of that fact in the letter of Mr. Upshur, then Secretary of State, addressed to Captain Reid on the 10th of January, 1844, to which letter the undersigned, minister of Portugal, referred in the paper he informally had the honor to present to the Hon. John M. Clayton, Secretary of State of the United States, on the 9th of November last, on the subject of the case in question, and to which paper the minister of Portugal now begs leave to call the particular attention of the Hon. Secretary of State.

It was, therefore, with some surprise that her Majesty's government received the note of the 28th of June, 1849, from the American legation at Lisbon, renewing the claim for compensation on account of the destruction of the "General Armstrong." It, however, gave further occasion to the Portuguese government convincingly to refute, in its opinion, all the arguments which were presented in that note; and consequently of its irresponsibility for the loss of that vessel.

The whole case rests upon a few points; especially as to which of the belligerents opened hostilities, and thereby first violated the neutrality of the port; then, whether at the time adequate means were at the disposal of the governor of the island to have enforced respect to that neutrality; and lastly, what are the duties and responsibilities of neutrals in similar cases.

All these points have been met and fully discussed in the correspondence lately had between the two governments. It has been unquestionably shown that the first shot was fired, without previous provocation, from the American privateer into an unarmed British boat, and that the subsequent destruction of the "General Armstrong," was provoked by that act, in spite of all the endeavors of the Portuguese authorities to prevent it, and

who had not at the time, as is stated and proved—and admitted by Captain Reid himself, in his protest—sufficient power effectually to enforce respect to the immunity of the territory; and it has further been shown that the law of nations cannot destroy the law of nature, self-preservation; consequently it cannot impose a duty upon a nation, the effect of which would be its own ruin. Such would have been the result, without saving from destruction the “General Armstrong,” had the governor attempted by force, with the inadequate means at his disposal, to prevent the retaliation of the British squadron.

Such are, in a few words, the circumstances of this case. It is evident that Portugal, the neutral power, cannot be made responsible for the rash though gallant act of Captain Reid and his brave crew, who chose to undertake his own defence, in a neutral port, against the vastly superior force of his enemy; besides, it has not, nor can it be shown that the Portuguese authorities voluntarily suffered the hostility of one belligerent against the other, or the after conflict. In such a case alone is the neutral power, by a general law, answerable for the consequences. It must also be admitted the Portuguese governor used all the means in his power, though ineffectually, to prevent the deadly strife. This is all that can be required of a neutral, in similar circumstances, according to the most celebrated writers on the law of nations, among whom is the able lamented American, Henry Wheaton.

The case of the ship “Shepherd” is of another description. It came within the exclusive jurisdiction of the laws of the kingdom. About ten thousand Spanish dollars were seized by revenue officers on board that vessel, having been shipped clandestinely and contrary to law, as was proved in court; for the case was carried to the tribunals of the country by the master of that vessel, James Hall. He there obtained a decree in his favor in 1831, which, however, upon revision or appeal, proved to have been irregular, the required forms of law having been disregarded. It was therefore annulled, and the seizure pronounced lawful by the subsequent decree of 1834.

The American legation in its note of the 7th of May, 1839, complains, in the name of Captain Hall, of this last decree as unjust, irregular, and claims the reimbursement of the forfeited coin, as awarded on the first hearing. The only point on which this case can rest is, whether it underwent all the required forms of law; for, the Portuguese executive can no more reverse a judicial sentence than the same power can in any other constitutional government where the different powers of the state are independent.

In the communications of her Majesty’s government to the American legation in Lisbon, in reference to this claim, and especially that addressed to Mr. Barrow on the 24th of February, 1843, a particular and elaborate account of the whole judicial proceedings was given, showing that all the forms of Portuguese laws applicable to the case were regularly conformed to upon the review or appeal, which adjudged, without further recourse in law, the seizure warranted and legal.

Though the case had been decided in its last resort, as stated, by the proper tribunals of the country, and was beyond the reach of executive power; when the renewed application was made by the American legation, on the 19th July, 1849, her Majesty’s government taking it into due consideration, and desirous to give further proof of its good faith and sincere

wish for the relief of the claimant, it laid the whole of the proceedings before the administrative section of the council of State for its opinion.

That opinion was submitted to her Majesty's government, transmitted, together with the *accordam*, or decree of the 10th June, 1834, of the Lisbon *relação*, or high judicial court, with the note of the 22d March last, to the American legation.

These papers must now have reached the Department of State, and the undersigned cannot but be persuaded that their perusal will satisfy the honorable Secretary of State of the utter impossibility of the Portuguese government favorably to attend, under all the circumstances of the case, to the claim of Captain James Hall. These are the only two cases, the undersigned thinks, which existed prior to the adjustment of other American claims, amounting to a large sum, admitted and duly satisfied by her Majesty's government in virtue of the arrangement made in 1838 with Mr. Edward Kavanagh; and this remark naturally leads the undersigned to observe, with all respect, that there must have been some misgiving, some doubt in the mind of that honorable and lamented diplomatist, in respect to these claims, to have caused him not to have insisted upon including them in the arrangement alluded to.

Subsequently, and only recently, other claims of American citizens have been presented to her Majesty's government; the undersigned thinks their enumeration to be as follows: for the restitution of a fine imposed and levied erroneously, it was alleged, upon a portion of the cargo of the brig "Long Island,"—the claim of the master of the ship "Ganges," for the amount of tonnage duty which had been levied, unjustly he thought, upon the said vessel in the port of Figueira; of the owners of the brig "Magoun," seized at Angoxa, taken to Mazambique, and there condemned; and a personal claim of Mr. Charles Dupuy, a passenger on board the brig, for alleged false imprisonment and maltreatment; the claim of the owners of a cargo of oil, transhipped from on board the ship "Miles" to a Portuguese national vessel, which vessel was forced to seek the port of Pernambuco, where the said oil was sold to repair the vessel; of the owners of the schooner "Colonel Blum," wrecked on one of the Cape Verd islands; and lastly the claim of the whaleship "Bolton."

In respect to the three latter cases, and Mr. Dupuy's claim, the undersigned has reason to expect the decision of her Majesty's government will shortly be communicated, if not already stated, to Mr. J. B. Clay, the American chargé at Lisbon, to be laid before his government.

The honorable Mr. Clayton will have been informed, in reference to the first, that upon examination of the documents presented by the consignees of the "Long Island," the fine was remitted, and ordered to be paid back to the claimants. The same restitution could not, the queen's government regretted, be extended to the case of the ship "Ganges," the tonnage duties which were paid by that vessel having been levied in virtue of the then existing laws, however vexatious it might have been. The case of the "Magoun," is another of those in which the executive power of the Portuguese government would have no control; its decision exclusively appertained to the judicial power, and cognizance was so taken by the proper tribunal in the possessions of her most faithful Majesty on the east coast of Africa.

The result of the judicial investigation and final decree of condemnation will have been transmitted to the Department of State, and the undersigned

feels warranted to say, that no exception can justly be taken against the said decree of the 23d May, 1848; for it was proved beyond a doubt, that the brig "Magoun" had doubly incurred condemnation, firstly, for having smuggled her cargo on shore at a port not open to foreign commerce or navigation—as was publicly known in the United States, the decree of 5th June, 1844, having been officially published by the American government, at the request of the undersigned—and, secondly, for evidently being engaged in the slave trade on the coast of her Majesty's possessions in that part of the world, that trade having been abolished in all the Portuguese dominions by the law of the 10th December, 1836, which law, also, was officially published in this country.

The tribunal at Mozambique which had competent jurisdiction, after an elaborate hearing, examination of witnesses, and surveys on board, decreed the condemnation of the vessel according to law.

Considering the special circumstances of each case, most of which were positive violations of the fiscal, and, in one instance, of the criminal laws of the realm, it is obvious that her Majesty's government cannot interfere in their decisions, when the proceedings have been conducted with regularity, and all the requisite forms.

It was therefore with much regret that the undersigned perceived, at his late interview with the honorable Secretary of State, that the foregoing decisions were apparently received with dissatisfaction, especially with reference to the cases of the "General Armstrong" and that of the ship "Shepherd."

The undersigned concurs with the honorable Secretary of State in the belief that direct diplomatic measures are exhausted in respect to these cases; he also admits that the American government is under strong impressions that Portugal ought to pay for the loss of the "General Armstrong;" but he will take occasion to state that his government, as well as himself, are as strongly convinced that, under all the circumstances of the case, the Portuguese treasure is not bound to make good that loss.

There exists a different, yet honest conviction in both governments in reference to this case, which ought not, nevertheless, the undersigned thinks, to disturb the existing harmony and friendly relations between the two countries; and as the American chargé, in replying to Count Tojal's note of the 9th March last, again insists upon the justice of that claim, the undersigned has been authorized to state to the honorable Mr. Clayton, should the reasons assigned by her Majesty's government, in the course of this unfortunate controversy, for rejecting the claim, be considered inconclusive by the American government—that the government of Portugal proposes, when answering to the above reply, to offer to terminate the question by both parties agreeing to refer the case of the privateer brig "General Armstrong," to the decision of a third friendly power, thereby giving a manifest proof of its good faith, and of its friendly sentiments towards the United States of America.

And should the American government believe—which can hardly be expected—that it has just cause to complain of the proceedings in the case of the Shepherd, or even of those in respect to the Magoun, the undersigned, fully acquainted with the friendly sentiments of his government towards that of the United States, and of the desire it cherishes to continue good relations with this republic, therefore of its disposition to have recourse to any fair and honorable measure tending to avoid any interruption in the

long subsisting harmony between the two countries, and, moreover, anxious to remove all suspicion, however slight, in respect to the good faith and rectitude of her Majesty's government, feels himself authorized and undertakes to offer, in the name and in behalf of his said government—who will undoubtedly confirm the proposal—to refer, also, either or both the above cases to the decision of the same third friendly power as may be selected and will accept to arbitrate in the General Armstrong case, or any other third power.

In conclusion the undersigned requests the honorable Secretary of State will honor him with as early a reply to this note as his convenience may permit, that it may be laid, with as little delay as possible, before the Queen's government at Lisbon; and he avails himself of this opportunity to to renew to the Hon. John M. Clayton the assurances of his distinguished consideration and perfect esteem.

DE FIGANIERE E MORAO.

To the Hon. JOHN M. CLAYTON,
Secretary of State of the United States.

T T.

Mr. Clayton to the Commander J. C. De Figanière é Morão.

DEPARTMENT OF STATE,
Washington, April 30, 1850.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note which the minister resident of Portugal addressed to him on the 27th instant, cursorily reviewing the claims of American citizens upon the Portuguese government, and offering on the part of that government, and by its authority, to terminate the question as to one of the said claims, viz: that of the General Armstrong, by a reference of it to the decision of a third friendly power; and intimating further that a similar reference of the cases of the Shepherd and the Magoun, which the minister resident suggests would be sanctioned by the Portuguese, if the minister's offer of reference should prove acceptable to the American government.

The undersigned forbears from making any observations upon the proposition which the minister resident of Portugal has felt himself personally at liberty, as officially authorized, to propound on the part of his government; and also from discussing the nature of the claims, the manner of their reception and treatment, the rejection of several and the prospect as to the remainder; because such observations and discussion appears to the undersigned to be unnecessary, and calculated to subserve no useful end; but inasmuch as the minister resident of Portugal has been pleased to request an early reply to his note, with the expressed object of communicating the same, with as little delay as possible, to the Queen's government at Lisbon, the undersigned hastens, with the President's permission, to inform the minister that instructions have been transmitted to the representative of the United States at Lisbon—which may have been already or will soon be acted upon—and the President's decision, under present circumstances, on

the proposition may be even now in the possession of the Portuguese government.

The undersigned in conclusion is compelled to add, that should the Portuguese government persevere in the refusal to adjust and settle what are believed to be the incontrovertible claims of American citizens upon that government, the only alternative left to the President will be immediately resorted to—the submission of the whole subject to the decision of the Congress of the United States, whose final determination as to the mode of adjustment will have all its appropriate and legitimate influence upon the course of the Executive.

The undersigned avails himself, &c., &c.

JOHN M. CLAYTON.

The Commander J. C. DE FIGANIERE E MORAO, &c., &c.

U U.

Mr. De Figanrière é Morão to the Secretary of State.

HER MOST FAITHFUL MAJESTY'S LEGATION,
New York, May 20, 1850.

The undersigned, minister resident of Portugal, has the honor herewith to transmit to the Hon. John M. Clayton, Secretary of State of the United States, a translation of the note of the 11th April last, addressed by the Portuguese government to Mr. J. B. Clay, chargé d'affaires of the United States at Lisbon.

The undersigned begs leave to call the particular attention of the Hon. Secretary of State to that part of the abovementioned note wherein her Majesty's minister of foreign affairs remarks that the contested part of the claim of the case of the Miles, being of a nature purely mercantile, might be referred to the decision of arbiters by each of the parties appointing three or more merchants of Lisbon, with power to consult other persons well versed in commercial and maritime law. The undersigned takes this step in order to remove any erroneous idea the American government may have formed in regard to the intention that actuated, and the construction the Portuguese government placed upon the proposition it made. It has come to the knowledge of the undersigned that the American chargé d'affaires understood that the case should be referred to *three Portuguese merchants only*, in which he has altogether misconstrued the intention of the government of Portugal; and the undersigned is authorized to assure the American government, that so far from wishing to limit the arbiters to *Portuguese subjects*, his said government suggested that each party should select three or more merchants, without restriction as to their nationality.

The undersigned, influenced by what he has had the honor to state respecting the wrong impression the chargé d'affaires of the United States appears to have entertained of the contents of that communication of the Portuguese government, in consequence, no doubt, of incorrect translation, has thought it proper to enclose, also, a true version of another note, dated the 13th April, by which the Hon. Secretary of State will perceive that the claim for the boat of the American whaleship Bolton has been admitted, and will be settled whenever the amount shall be ascertained.

The undersigned will likewise transmit to the Hon. Secretary of State, with his permission, translations of other documents, so soon as they can be made, that no other erroneous impressions, as in the above instance, may arise in respect to the true purport and proper meaning of the communications or propositions of her Majesty's government.

In reference to the question the Hon. Mr. Clayton put to the undersigned—"What sovereign her Majesty's government had named to be the arbiter in the case of the General Armstrong?"—he begs leave to refer Mr. Clayton to the communication of Count Tojal, of the 15th April, of which he has no doubt received the copy from the American legation at Lisbon, in which note, after answering the arguments advanced in Mr. Clay's reply of the 15th March previous, he concludes by proposing to refer the claim to the arbitration of his Majesty the King of Sweden, the monarch of a distinguished maritime power, and to whom the rights of neutrals are of the highest importance.

The undersigned trusts, as well as his government, that the United States government will see in this reiterated offer the anxious desire of the Portuguese government to bring this case, and all other pending claims, to an amicable and prompt settlement; and should his Swedish Majesty be pleased, at the request of both parties, to accept to act as arbiter, this long pending question can now terminate satisfactorily to both countries, in a friendly, worthy and dignified manner, settling at the same time important questions and principles of the law of nations, which both governments, on that account, should be equally anxious to have determined.

The undersigned avails himself of the occasion to renew to the Hon. Secretary of State the assurance of his distinguished consideration.

DE FIGANIERE E MORAO.

HON. JOHN M. CLAYTON,

Secretary of State of the United States.

V V.

Mr. Clayton to the Commander J. C. de Figanière é Morão.

DEPARTMENT OF STATE,

Washington, May 24, 1850.

SIR: I have the honor to acknowledge the receipt of your note of the 20th instant, and of the copies in translation of two notes addressed by the Portuguese government, on the 11th and 13th ult., to the representative of the United States at Lisbon, on the subject of the Miles and Bolton claims.

In offering my thanks for your polite attention in communicating this information, with which, however, Mr. Clay had already acquainted me, I beg leave to repeat that there is every reason to believe that the government of Portugal has been made aware of the decision of the American Executive upon the question of submitting the claims of our citizens to arbitration.

I remain, sir, &c., &c.,

JOHN M. CLAYTON.

The Commander J. C. DE FIGANIERE E MORAO, &c.

W W.

J. C. de Figanière é Morão to Mr. Clayton.

HER MOST FAITHFUL MAJESTY'S LEGATION,
Washington, June 25, 1850.

The undersigned, minister of Portugal, has the honor herewith to lay before the Hon. John M. Clayton, Secretary of State of the United States, the translation of the note his Excellency Count Tojal, her most faithful Majesty's Minister and Secretary of State for Foreign Affairs, addressed to Mr. J. B. Clay, the American Representative in Lisbon, on 28th May, ult., together with a translated copy of the communication of the Governor General of the province of Cape Verd attached to that note, and both on the subject of the claims of the owners, captain and others interested in the schooner Colonel Blum, lost at the Isle of Sal, Cape Verd.

In addition to that which is stated in the enclosed papers, the undersigned begs leave to inform the honorable Secretary of State, that he may be fully acquainted with the nature of this claim in respect to the amount demanded, that besides that which is found relative to the schooner Colonel Blum, in the universally acknowledged correct French Annual Register, entitled "Régistre de Ruexenseignments sur Naverez" or "Lloyd's Français," wherein, under No. 1522, the said schooner is rated of the *fifth class* for the Atlantic ocean, of the *second* in respect to hull and rigging, and of *uncertain age*, he lately forwarded to his government original certificates to the following effect: A certificate of the New York Sun Mutual Insurance company showing how the said schooner Colonel Blum stood on their register, rated B 3, built in Prince Edward's Island in 1838 or '39, condemned as a slaver in 1846, &c., and stating that that company would have refused taking the risk of coffee from Rio de Janeiro to the United States in such a vessel, had the application been made. A certificate of the New York Insurance Company stating more or less the same as the above, in respect to the same schooner, which had been the British schooner Atlantic, condemned at Key West and afterwards refitted, &c., and declaring, also, that it would not have taken the risk of insuring a cargo of coffee in said vessel.

A certificate of the inspector of the first named company, stating her value when she sailed from New York, in July, 1848, to have been, in his estimation, from three to four thousand dollars.

A certificate of the inspector of the other named "marine insurance company," stating also, that in his opinion, the "Colonel Blum," when last in the United States, might have been worth four thousand dollars.

A certificate of Messrs. Foster, Elliot & Co., and Messrs. Grinnel, Mintern & Co., both houses of the highest respectability in continued trade with Rio de Janeiro, in which they state, that freight at Rio for the United States during the months of October, November and December, 1848, (when the schooner "Colonel Blum" would have arrived, if not lost,) "were dull and unchangeable at forty to forty-five cents per bag of coffee, and plenty of shipping," according to the advices of their correspondents, Messrs. Maxwell, Wright & Co.

The undersigned will further state, from his own knowlege, that the schooner "Colonel Blum," though she belonged to and was owned in New York, from where she sailed, was nevertheless insured for four thousand

dollars, perhaps more than her real value, at the "Lexington insurance company," in the State of Kentucky, and her property valued at one thousand and fifty dollars, at the "mutual security" of New Haven, in Connecticut.

Count Tojal, in his note to Mr. Clay, well establishes the fact, that it was not the bursting of the hoops of the "Colonel Blum's" water casks, that compelled her master to seek the prohibited port of Madeira for the only object of obtaining water; but the undersigned begs leave to add, to all that which his Majesty's minister of foreign affairs states on the subject, that the schooner "Colonel Blum" sailed from New York with the full intention to touch at the Cape Verds, as the policies of insurance both on the vessel and cargo, will prove, for therein it is conditioned that the said schooner have the privilege to touch at said islands on her voyage to Rio de Janeiro, to where she was insured, and no further.

The undersigned avails himself of this opportunity again to offer to the Hon. John M. Clayton assurances of his distinguished consideration.

DE FIGANIERE E MORAO.

To the Hon. JOHN M. CLAYTON, &c., &c.

XX.

J. C. de Figanière é Morão to Mr. Clayton.

HER MOST FAITHFUL MAJESTY'S LEGATION,
Washington, July 9, 1850.

The undersigned, Commanduer de Figanière é Morão, of her Majesty's council and minister resident of Portugal, has been instructed by his government to express to the Honorable John M. Clayton, Secretary of State of the United States, its profound regret on being informed by the American representative in Lisbon, that the President of the United States has declined the offer of her Majesty's government to refer the contested claim for the loss of the privateer brig General Armstrong, as well as all other claims, to the friendly and impartial decision of an independent third power, or of any other arbitrators who might be chosen and agreed upon by both governments; and the more so when this refusal is taken in connection—in relation to the General Armstrong—with the letters of Mr. Clayton's predecessors to the parties interested in this claim. Both Mr. Upshur, on the 10th of January, 1844, and Mr. Calhoun, on the 5th of August of that year, declined renewing this claim; the one said he was "unwilling, under all the circumstances, to renew the application, having every reason to believe that all future applications will prove as fruitless as those that are past; and this government can see nothing in the circumstances to justify or warrant it in having recourse to any other weapons;" and the latter, Mr. Calhoun, wrote that "the case of the General Armstrong was disposed of by my predecessor upon grounds which appeared to me to be judicious and proper;" which decided official expressions of opinion warranted the Portuguese government, at all events—the American government having, notwithstanding, thought proper to re-open the question in 1849—to expect so fair and friendly a proposal of reference to be accepted

in order to terminate this matter in an honorable, dignified and satisfactory manner to both governments.

Although the undersigned has been led to the satisfactory conclusion, that there is no right on the part of Captain Reid, his officers and men, to make the claim in question, and is persuaded that, on an attentive perusal of the late correspondence upon the subject, the honorable Secretary of State will arrive also at the same conclusion, as he will perceive that every argument brought forward in support of this claim has been met and incontrovertibly destroyed, notwithstanding a supposed admission on the part of his government, noticed as the only remaining argument by the American representative at Lisbon in his last note of the 16th of May, addressed to her Majesty's Secretary of State for Foreign Affairs, Mr. De Figanière, feels bound, at the present stage of the question, to seize the earliest opportunity to notice and correct this misapprehension into which the American chargé d'affaires has fallen, as it appears, in consequence of a quotation in Count Tojal's note of the 9th of March, which Mr. Clay deems admitted—that the Governor of Fayal was bound to, but did not employ all the means at his disposal to protect the "General Armstrong," and prevent the violation of the neutrality of the port by the British squadron.

The undersigned begs to say that his government has never conceded in any manner that the governor of Fayal was bound to use the military force under his command, had it even been adequate to sustain the neutrality of the port; on the contrary, it had always denied the existence of such obligation.

But, in order to remove entirely this misapprehension which the undersigned thinks could in no wise be derived from any of the arguments employed by his government in the previous correspondence in respect to this claim, he will endeavor clearly to state the meaning and intention of such arguments or passages in said correspondence, based upon the view taken of the law of nations on the extent of the duty of a neutral power when either of the belligerents violate its neutrality, and the application of that law, as so understood, to the facts and circumstances of the case under consideration, as far as they are admitted, and not disputed by the government of the United States.

The material facts thus admitted or recognised are few and simple, and it will be unnecessary to recapitulate them, or any of them, at length, or to do more than merely to refer to them, Mr. De Figanière wishing to avoid to protract a discussion which has already proceeded to a great length.

The minister of Portugal will therefore state, with Mr. Clayton's permission, how he understands the law of nations with respect to the duty of neutrals; the rule is, that a neutral is bound to observe neutrality between the belligerents; not to give to one any advantage over the other, so as to be a participator in the hostile operations of either party. There are some exceptions to this rule, for instance—when the neutral power is bound by treaties, existing previous to the war, to permit one of the belligerents to seek an assylum in its ports, or giving right of way through the country with its troops. There is no obligation on the part of a neutral country to keep up a force in all its bays, rivers, ports or harbors, and on its frontiers, large enough to protect the subjects or citizens of either of the belligerents, who may be in them, from the acts of the other of them. It has been customary to allow belligerents a right of passage through neutral countries with troops, but it has never been asserted that the sovereigns of those

countries conferring the privilege, undertook to protect each party against the other. So the privilege allowed by neutrals to belligerents to use the ports, bays, rivers and harbors within their territories, imposes no obligation whatever on the former to keep the peace between the latter ; but it is only required that the neutral shall not become the partizan of either of the belligerents.

The whole duty of neutrals, in this respect, is laid down correctly by Klüber in section 284 of his Treatise on the Law of Nations: "The neutral is not to *allow voluntarily*, that either of the belligerent parties shall commit upon its neutral territory, either continental or maritime, any hostile acts."

The undersigned contends that the claim in question, in all its circumstances, is to be tested by this rule, and he maintains that no other is needed to protect either of the belligerents in their just rights. There is no "positive duty" on the part of a neutral power to protect the subjects or citizens of a foreign power "at all hazards," and consequently there is no obligation to indemnify them for losses sustained either by domestic commotion or foreign invasion ; and Mr. De Figanière is well satisfied that no writer upon the law of nations, properly understood, has ever affirmed the existence of such a "positive duty."

The passage quoted by Mr. Hopkins, late American chargé d'affaires in Lisbon, from Bynkerschock's treatise on the law of nations, in his note of 28th June, 1849, and afterwards repeated by his successor, Mr. J. B. Clay, must not, in connection with the context, be assumed to lay down any such rule.

An exaggerated degree of importance, the undersigned thinks, has been attached to the loose language of that writer—language which receives no countenance or support from any other writer on the law of nations, if his meaning be such as Mr. Hopkins and Mr. Clay have understood it. The misconstruction of this solitary passage in the work of a speculative writer is the only semblance of authority which has been or can be referred to in the support of the new theory, that every neutral is bound to protect his own territory to the extent of making war upon every other power that may do injury to the person or property of a foreigner, or to compensate such foreigner, or his heirs, or the nation to which he belongs ! If such a stringent rule existed, it would be found very fully discussed and defined in the writings of publicists, and there would be no difficulty in finding numerous instances of its practical enforcement. Such a doctrine would be so startling in its character, that silence could not possibly be preserved upon it ; and yet Grotius, Vattel, and other writers treating of the protection due to foreigners, lay down no such rule ; on the contrary, it is assumed by all of them that the duty of a sovereign who admits foreigners within his territory is merely to give them the same protection as he gives his own subjects.

No State is bound to make war to obtain redress for its wrongs : and, again, the sovereign is not bound to make war for the purpose of resenting any injury inflicted upon his own subjects by a foreign power, nor is he bound to compensate them for said injuries. There can, therefore, be no obligation, legal, moral or equitable on his part, to make war or grant compensation in the case of a similar insult or injury offered to or inflicted upon a foreign resident in his dominions.

Bynkerschock should not be understood to mean, that a neutral is bound,

in every case and at all hazards, to make war upon either of the belligerents who shall, to the injury of the other, violate his neutral territory.

In respect to the evident hasty perusal and consequent misconstruction of the celebrated passage of this author, and which appears to have occasioned the renewal of this claim, now in question, against the government of the undersigned; he begs leave to remark, that *Bynkerschock* merely affirms that, if the property of an enemy be taken in the port of a neutral, "it is the duty of the neutral State to cause the said property so taken to be restored, either at its own expense, or at the expense of the injured party;" then he mentions several treaties, providing that this restoration shall be at the expense of the latter, the injured party. He regards this as an unjust provision, the injury being inflicted on the neutral sovereign, who should seek to revenge himself upon the aggressor.

This general language is not objectionable, considering the real spirit and meaning of the writer, who is merely seeking to establish the rule that, in the absence of treaty stipulations, the restitution of property, under the control of a neutral power, to the party entitled to it, notwithstanding its unlawful seizure within the territory of that power, should be made without charging the owner the expense incurred in the seizure, detention, and delivery of such property.

The writer then proceeds to comment upon the construction of a clause in a treaty between France and the States-General, merely stipulating that in case of the seizure of a prize in the ports, bays, or rivers of either power, it shall use its utmost endeavors to obtain a restitution of the captured property; and contends that, as it is the duty of the sovereign to use his utmost endeavors to effect that purpose, it follows he must do so at his own expense, nay, by going to war, if other means are not sufficient; then follow the words relied upon by the American legation: "Such is the law which is observed among all nations, and there is no other reason for it, than that it is not lawful to commit violence within the territory of another, and that ports, bays and rivers are within the territory of the sovereign of the country."

It is observable that nothing is said in relation to the alleged duty of making compensation, and that the words "such is the law," &c., have no clear application to the sentence that precedes it. The question which *Bynkerschock* had under discussion, was the meaning and effect of the words "utmost endeavors," in the treaty. This construction of those words would probably not be followed by the parties to the treaty, as he appears to have somewhat stretched their meaning.

The language immediately preceding the words "such is the law," &c., lays down no law, but merely contains an argument on the meaning of a treaty stipulation. The language is loose, general and ill-considered; but a reference to the cases cited by him will show his real meaning.

He mentions the case of a British ship captured by the French in the Bay of Delaware, which ship, coming under the control of the Americans, was given up by them to the British, because the Bay of Delaware was held to be within American territory, although the French denied the fact, contending that the capture was made at sea. He further mentions several cases where neutral ports were violated; and particularly a case where the British took some ships out of the port of Bergen, in Norway, on which occasion the Danes resisted the English with all their might, but failed to prevent the capture of the ships; but he does not say, that in any of these

cases the neutral power was held bound to make war, or compensate the parties injured.

The undersigned will venture to assert that no such claim has ever been heard of before the question was raised which is now under discussion. English ships have been captured in the waters of Portugal by the Americans, and French ships in like manner by the English; but neither France nor England has supposed that Portugal was bound to make war or compensation for these losses. Such an obligation would necessarily involve the duty to keep up a force in the frontiers and waters of Portugal sufficient to resist and overcome all hostile comers.

Such an obligation cannot exist. And, indeed, it has always been contended by the United States, that they are not bound to keep up a military and naval force large enough to prevent their own citizens from making inroads on foreign territory, and that it is only required that the United States shall not aid or contravene, but shall honestly endeavor to prevent such acts. With respect to the case of the *Grange*, quoted by the American legation, that ship was captured in the waters of the United States, and taken to Philadelphia. If the French had been permitted to carry off their prize, it might, under all the circumstances then affecting the question, have afforded evidence of a voluntary permission by the United States to France to make captures in American waters; in which case there would have been a departure from neutrality by the United States, and consequent liability, as apprehended by President Washington, to be called upon by England for the value of the vessel thus captured within the jurisdiction of the United States, and voluntarily brought under the control of their government.

The neglect by a neutral power to insist upon redress for the violation of its territory may, in connection with other circumstances, afford evidence of a connivance on its part with one of the belligerents; but the question to be examined in every case is, whether there has been a voluntary and collusive permission to violate the neutrality.

The law upon this subject appears to be stated with accuracy in Wheaton's *International Law*. Speaking of the unlawfulness of the capture of an enemy's property within a neutral port, he says, page 141: "It is the right as well as the duty of the neutral State, when the property thus taken comes into its possession, to restore it to the original owners." He mentions traces [cases] of the exercise of this jurisdiction in England, in the reigns of Charles II. and James II., and quotes a letter from Sir Leolin Jenkins, judge of the admiralty in those reigns, relating to a prize seized within British waters by a French ship, and brought into a British port, and recommended that it should be set free by the King's authority. Mr. Wheaton says "this letter bears no doubt as to the sense entertained by this eminent civilian, as to the right and the duty of the neutral sovereign to make restitution when his territory is violated." Mr. Wheaton is not, however, to be understood by asserting that the duty to make restitution exists, when the property does not come into the possession of the neutral sovereign, but only to affirm, as the British admiralty judge did in the letter referred to, the right and duty of a neutral to restore property captured within its territory, and afterwards coming under its control to its rightful owner.

The undersigned conceives that however great an outrage might have been committed by the British squadron in the port of Fayal upon the

privateer General Armstrong, and even if its commander had been properly justified in all that he caused to be done, yet it by no means follows that the present claim could be sustained against Portugal.

A brief reference to the leading facts, as stated by the United States, will show conclusively that the Governor of Fayal and the Portuguese government acted in good faith towards the United States; and that the said government did not authorize the violation of the neutrality of that port, and did not connive at it, nor collude with Great Britain in any way for that purpose, but preserved a neutral attitude towards both parties. That fact being ascertained, there is, as Mr. De Figanière believes, no ground for the claim for compensation set up against his government.

The facts as stated or admitted in the correspondence in behalf of the United States government, are as follows: According to Captain Reid's statement, the private armed brig General Armstrong, under his command, anchored in the Port of Fayal on the 26th September, 1814, about noon; in the evening of the same day a British squadron under the command of Commodore Lloyd anchored in the same port. Captain Reid says that soon after seven o'clock p. m., suspecting hostile intentions on the part of the British, he ordered his brig to be warped on shore, close under the guns of the castle, and while this order was in the process of execution, four boats filled with armed men approached his vessel. They were repeatedly hailed, and warned to keep off. No answer being returned, and the boats continuing to approach, he gave orders to fire, and several men in the boats were killed and wounded. The boats returned the fire which was commenced from the brig. This is Captain Reid's statement; but Commodore Lloyd affirms he had no hostile intention, and only intended to ascertain what the brig was, and did not mean to board her or commit any act of hostility. This statement is confirmed by the deposition of Lieutenant Fausset, the officer in command of the first boat, an unarmed one, upon which the first shot was fired. What the actual intention of the British was, they could best tell; and they certainly had as good a right to use the port of Fayal as had the Americans.

Conceiving that the privateer had violated the neutrality of the port, and committed a gross outrage, Commodore Lloyd resolved to capture her, and did so accordingly, notwithstanding the protests of the governor of Fayal. Captain Reid, finding that the British were resolved to take the brig, abandoned her after scuttling her. Soon after this the British set her on fire.

Soon after the first conflict, the American consul at Fayal applied *for the first time* to the governor, requesting protection for the privateer. The governor earnestly and indignantly remonstrated with the English commander on his determination to disregard the neutrality of the port. Much indignation was of course excited on the part of the local authorities, as well as all classes of society, by the cannonade on the privateer from on board the British brig Carnation, by which persons and property on shore were injured. Hence the first version of the affair which was given by the governor was highly colored in favor of the Americans, and even represented that the British not only intended in the first instance to attack the privateer with four boats, but actually commenced firing at the same time with the Americans, when, as it is admitted by Captain Reid, he fired first, because he *supposed* the boats were coming to attack him.

The minister of foreign affairs, the Marquis d'Aguiar, relying on the

above statement received of the Governor of Fayal, addressed a letter to the British legation at Rio, dated 22d December, 1814, representing that the British had commenced an unprovoked attack upon the privateer; and he treats as false and evasive the statement of Commodore Lloyd that the privateer had broken the neutrality by firing on the boats, assuming that the latter, as stated in the governor's report, were the real aggressors. That report contains, from information derived from the Americans, the following passage: "The captain of the privateer not wishing to allow them [the British] to come on board of his vessel, a *fire was begun on both sides.*"

Great stress has been laid upon the contents of these documents; and it has been repeatedly contended that the Portuguese government is precluded from denying the accuracy of the statement therein contained. But the undersigned can discover no force whatever in that argument. The accusation made on the strength of the statement of the Americans was discovered to be in important respects incorrect, when the British version of the affair was received by his Majesty's government, supported by Commodore Lloyd's statement and Lieutenant Faussett's affidavit.

Upon hearing both sides it was found that Captain Reid acting on a mere supposition that the boats were approaching his brig for the purpose of boarding it, fired upon and killed and wounded several men in an unarmed boat. Captain Reid had no sufficient reason for concluding that the boat's crew intended to board his vessel, there being neither words, acts nor signs indicating such an intention.

But inasmuch as no act of hostility on the part of the privateer in the port of Fayal warranted the British to cause injury to the town and inhabitants, a suitable apology was made to the Portuguese government by the British government, and in March, 1818, the sum of three hundred and nineteen pounds sterling was paid by way of compensation for the actual injury sustained by private individuals.

Great stress, also, has been laid in the correspondence of the American legation, upon this act of the British government, which, it is supposed, amounts to an admission that the British and not the Americans were the aggressors.

It appears, however, to the undersigned, that no such admission can properly be deduced therefrom; on the contrary, the British government did not censure the conduct of Commander Lloyd, on the ground that the neutrality of the port of Fayal had been violated by the privateer's unprovoked attack on the boats; nevertheless for the reasons above stated, an apology was due from the British government, and accordingly was rendered to that of Portugal.

Mr. De Fignière would here notice an argument which has been used for the purpose of showing that the boats must have approached the privateer in a hostile manner for the purpose of boarding her, viz: that if such had not been the case Captain Reid would not have fired upon the boats and thereby provoked an attack by the whole British squadron, which he must have known that he was incapable of resisting. But an examination of the facts will lead to the conclusion that there is no weight in this argument.

The privateer, as before stated, entered the port on the 26th September, 1814, for water, and was ordered by the governor to depart the next day by one o'clock, it not being allowed for privateers to use that port for the

purpose of cruising about the vicinity for prizes, and seek shelter therein whenever danger might threaten, as if it were a port of their own country. On the appearance, therefore, of the British squadron, Captain Reid knew that his vessel would inevitably be taken, and he probably concluded that it would be better for him to be taken within the neutral port than at sea, hence there was a strong motive for provoking an attack on the part of the British, especially as he could at any moment go on shore in safety.

It now appears to be contended that the British had no right to approach the privateer in armed boats, although such a proposition is impliedly discarded by Mr. Hopkins in his note already alluded to. Mr. Clay, however, in his communication of the 24th April last, says: "Had their intention been merely to reconnoitre, an armed reconnoissance in a neutral port of an enemy's vessel would have been equally against the law of nations, and the Armstrong would have been perfectly justifiable in preventing it by force of arms, without being guilty of any violation of neutrality." If it be meant, as it appears to be by this, to assert that armed boats had no right to go near to an enemy's vessel in a neutral port, the undersigned has no hesitation in saying that such a proposition appears to him to be totally unfounded. The British men-of-war might even have anchored alongside of the privateer General Armstrong without giving just cause of offence, and the privateer would have had no right to object to it. Nor had she any right to prohibit the boats from coming near to her, but they were justified in disregarding such prohibition.

No authority has been cited which supports Mr. Clay's proposition, but the nearest which could be found, was the opinion of Sir W. Scott, in the case of the "*Twee Gebroeders*," cited from *Chitty's Law of Nations* by Mr. Clay's predecessor. In that case it was held that a belligerent lying in a neutral port had no right to send out boats to capture a vessel lying outside the port, for that was using the neutral port for the purpose of making the capture as much as if guns had been fired from the ship in the port upon the ship outside. This can have no application whatever to the one under consideration, and it is presumed that no judicial opinion or writer of eminence really supporting the extraordinary proposition for which this case was referred to, could possibly, upon the most diligent search be found. The language of Mr. Hopkins upon this question is widely different from that used by his successor. That gentleman says: "The British commander endeavored to throw the odium of the transaction on the American Captain Reid, alleging that he sent the boats merely to reconnoitre the brig, and without any hostile intention; to reconnoitre an enemy's vessel in a friendly port at night, with four boats, is certainly a strange proceeding. The fact is, they expected, as the brig was warping in, that the Americans would not be prepared to receive them, and they had hopes of carrying her by a coup-de-main."

From this, it appears to the undersigned quite clear that Mr. Hopkins did not suppose, as Mr. Clay does, that a mere approach of boats near to the brig, without an actual intention of attacking, warranted the latter in opening a fire upon them; but he put this part of the case upon the distinct ground that the British intended to board the brig, and were approaching in hostile array with that intention, and consequently were the aggressors; thus throwing out of view entirely the statements and depositions of the British officers. And Captain Reid himself attempts to justify his conduct upon that simple ground, and not upon any supposed right to fire upon

boats coming near to a vessel, without intending an actual attack. It was Captain Reid's rash and unfounded assumption that the British intended to board his vessel, which caused the whole difficulty and his own destruction.

The Minister of Portugal begs to call the attention of the honorable Secretary of State to the following clause in the report of the Senate's Committee on Foreign Relations, submitted May 19, 1846: "Although it is undoubtedly the duty of government to prosecute the claims of its citizens against foreign nations, and to seek redress by all prudent and proper means, yet it must be left to its discretion to judge what these means shall be; nor does their failure impose any obligation on the government to assume the office of redressing the wrongs by recompense from its own coffers."

With reference to this passage the undersigned would observe that there can certainly be no greater obligation on the part of a neutral to prosecute the claims of foreigners who may have received injuries within its territory from the aggressions of other nations, than there is on the part of a government to prosecute the claims of its own citizens or subjects against foreign nations. Indeed, the obligation in the former case is by no means so extensive as in the latter. Hence it appears clear to the undersigned that, even if the neutrality of the port of Fayal had been violated by the British squadron without any provocation whatever, it would not, upon the principles recognized in the report just quoted, have been the duty of the Portuguese government to make war upon Great Britain or to compensate the owners of the "Armstrong."

In seeking redress for wrongs, prudence must be observed; it must be left to the discretion of each State to determine what means shall be resorted to, and the failure to use force does not make the government a debtor to the party injured.

In conclusion, notwithstanding all that the undersigned has here submitted for the consideration of the American government, he begs to state most distinctly that he is instructed to repeat the offer heretofore made to submit this question, either alone or in connection with all or any of the other matters in dispute between the two governments, to the decision of third parties mutually chosen.

The undersigned, minister resident of Portugal, avails himself of this opportunity to reiterate to the honorable John M. Clayton, Secretary of State of the United States, sincere assurances of his very distinguished consideration and great esteem.

DE FIGANIERE E MORAO.

To the Hon. JOHN M. CLAYTON,
Secretary of State of the United States.

Y Y.

Mr. De Figanière é Morão to the Secretary of State.

HER MOST FAITHFUL MAJESTY'S LEGATION,
Washington, August 6, 1850.

Complying with the order received from her Majesty's government, the minister resident of Portugal has the honor herewith to enclose, for the

perusal of the honorable Secretary of State of the United States, hasty, though he trusts correct translations of the last two notes addressed by his Excellency Count Tojal, her Majesty's Minister and Secretary of State for Foreign Affairs, to Mr. James B. Clay, chargé d'affaires of the United States in Lisbon, dated the 2d and 6th July ultimo.

Mr. De Figanière takes the liberty to request Mr. Webster will be pleased to inform him of the present views the government of the United States entertain, in respect to the actual state of the important question referred to in the enclosed notes, taken in connexion with the replies of Mr. Clay, dated the 2d and 7th of said month, that he may communicate them, as he is directed, to his government by the earliest opportunity.

The Portuguese Minister avails himself, &c., &c.

DE FIGANIERE E MORAO.

To the Hon. DANIEL WEBSTER,
Secretary of State of the United States.

ZZ.

Mr. De Figanière é Morão to the Secretary of State.

HER MOST FAITHFUL MAJESTY'S LEGATION,
Washington, August 9, 1850.

SIR: Having just observed that I have omitted to furnish the Department of State, as directed by my government, with a translation of a short communication, addressed by his excellency Count Tojal to Mr. Clay on the 20th June last, I hasten to have the honor to lay it before you.

The said enclosed note refers, you will perceive, to a conversation held at the residence of the Minister for Foreign Affairs, in Lisbon, on the 20th of said month, immediately after the arrival of the steamship Mississippi; in the course of which conversation the American chargé d'affaires informed Count Tojal, it appears, that her majesty's government should not entertain any hopes that either the government or the Congress of the United States would approve of a reference to arbitration in respect to the pending claim of American citizens, as he, Mr. Clay, had well-grounded reason to assure his excellency that such reference would not be admitted, and that in consequence of this assurance, Mr. Clay expected his excellency would inform him on the next day of her majesty's determination.

Mr. Clay replied to the said note on the same day, as you are no doubt informed.

I avail myself of this opportunity to renew to you, sir, the assurance of my very distinguished consideration.

DE FIGANIERE E MORAO.

To the Hon. DANL. WEBSTER,
Secretary of State of the United States.

DEPARTMENT OF STATE FOR FOREIGN AFFAIRS,
June 20, 1851.

In consequence of the important verbal communication you this day made to me, in relation to the pending claims of the United States against

the government of Portugal, and in respect to which communication you require an answer by to-morrow, I immediately imparted its purport to the other members of the cabinet, endeavoring to relate with all correctness all you proposed to me.

You will, however, permit me to say to you, that the object of said communication is of so grave and delicate a nature, in regard to the interests of the nation and its dignity, that I must request, in behalf of her majesty's government, you will be pleased to inform me in writing, of the substance of that communication; as it might happen, in an affair of so much consequence, treated verbally, that I might have misunderstood or not comprehended its true meaning; besides, as the affair has to be submitted to the council of state, as is required by the constitution of the State, in relation to such matters, a document explicitly and clearly stated in writing, becomes indispensable, so as her Majesty's government may form its judgment.

I have therefore to request you will please communicate to me in a note what are the points in reference to which you require an immediate answer, in order that I may, without loss of time, present it to the minister and the council of State, without which it is not possible to give you a conclusive answer, for propositions of such a nature made verbally, therefore liable to misapprehensions, cannot in any way become a question for the deliberation of her Majesty's government.

I remain awaiting your answer, and avail myself of the occasion to reiterate to you the protests of my most distinguished consideration.

God preserve you!

CONDE DE TOJAL.

MR. JAMES BROWN CLAY, &c., &c.

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A A A.

Mr. Webster to the Commander J. C. de Figanière é Morão.

DEPARTMENT OF STATE,

Washington, August 10, 1850.

The undersigned has the honor to acknowledge the receipt of Mr. De Figanière's note of the 6th instant, transmitting copies (in translation) of notes addressed by the Minister of Foreign Relations of Portugal to Mr. Clay, the representative of the United States at Lisbon, dated the 2d and 6th ultimo, and asking the present views entertained by this government in respect to the actual state of the question between the two governments, to which those notes refer.

The undersigned begs leave to acquaint Mr. De Figanière that since the receipt of his note, now acknowledged—indeed this very day—he has received despatches from Mr. Clay; and that, as soon as they and the documents which accompany them can be perused by him, the undersigned will request the pleasure of a conversation with Mr. De Figanière, or address him again upon the subject by letter.

The undersigned avails himself, &c., &c.

DANIEL WEBSTER.

Commander J. C. DE FIGANIERE E MORAO.

B B B.

Mr. Webster to the Commander J. C. de Figanière à Morão.

DEPARTMENT OF STATE,

Washington, September 5, 1851.

On the 7th ultimo the undersigned had the honor to receive from Mr. De Figanière, a letter under date of the day previous, communicating to the undersigned translations of the last two notes addressed by his Excellency Count Tojal, her Majesty's Minister and Secretary of State for Foreign Affairs, to Mr. James B. Clay, Chargé d'Affaires of the United States in Lisbon, on the 2d and 6th of July last; and requesting the undersigned to inform him of the present views of the government of the United States in respect to the actual state of the important questions referred to in those notes, taken in connexion with the replies of Mr. Clay, of the 2d and 7th of the same month, in order that he may be able to communicate them to his government, as he is directed to do, by the earliest opportunity.

Since the receipt of Mr. De Figanière's note, despatches from Mr. Clay have reached this department, bearing dates up to the time when he quitted Lisbon. These various papers have been submitted to the President for his consideration.

In his note of the 6th July to Mr. Clay, in reply to one from the latter of the 2d of that month, communicating, by request, the amounts of the several claims of citizens of the United States against Portugal, Count Tojal makes the following offer, on the part of his government.

"The government of her Majesty," he says, "animated with the same desire which the government of the United States professes, to maintain without interruption relations of good harmony and intelligence between the two countries, yields to the force of circumstances, and without again reverting to the justice or injustice of the claims presented by the government of the United States, and only *pro bono facis*, offers to pay the said mentioned claims, amounting to \$91,727, according to Mr. Clay's account, with the only exception of that relating to the privateer "General Armstrong."

"In respect to this claim," Count Tojal proceeds to say that "the undersigned cannot deviate from the proposal heretofore made to Mr. Clay—that of so important a claim being submitted to the decision of a third power, and therefore the undersigned will again repeat to Mr. Clay, that the government of her Majesty is ready to refer the claim of the privateer General Armstrong to his Majesty the King of Sweden, or to any other power chosen by both governments."

The President instructs me now to say that, sincerely wishing to preserve relations of amity with Portugal and to bring pending questions to an immediate close, the government of the United States accepts Count Tojal's offer, in behalf of his government, to pay the several claims as stated in Mr. Clay's note; and the proposition made by the same authority to refer the case of the General Armstrong to arbitration. His excellency Count Tojal, on behalf of his government, proposes his Majesty the King of Sweden, or some other power to be agreed on, as arbiter on this case between the two powers. While the government of the United States does not wish to make any objection to the King of Sweden as arbiter, it nevertheless, on its part, proposes the President of the French republic; and the choice be-

tween these two personages may be decided, when a proper convention shall be drawn up carrying the understanding of the parties into effect.

A letter was addressed by the department, to Mr. Clay, on the 23d ult., which will probably reach him in Paris, on or before the middle of this month, acquainting him with the acceptance, by the President, of the proposition made to him by your government, and inquiring whether it would be convenient and agreeable to him to return to Lisbon for the purpose of concluding the proposed arrangement.

Recurring again to the vast importance of a prompt adjustment of these questions, the undersigned has the honor to renew to Mr. De Figanière the assurance of his distinguished consideration.

DANIEL WEBSTER.

The Commander J. C. DE FIGANIERE E MORAO.

two or three years ago may be decided, when a proper convention shall be held, up to the time of the adjournment of the present session. A letter was addressed by the department to Mr. C. on the 24th of July, which will probably reach him in time to be before the meeting of the board, concerning the same. It is the intention of the department to make in him by your department and inquiry, whether it would be convenient and advisable to him to return to London for the purpose of continuing the proposed arrangement.

It being again in the last instance of a proper adjustment of these questions, the undersigned has the honor to refer to Mr. De Foy, the secretary of his distinguished commission.

DANIEL WEBSTER.

The Commissioner, J. C. De Foy, Secretary of the Commission.

SECOND SERIES.

CORRESPONDENCE RELATING TO THE CLAIMS OF THE OWNERS, &C. OF THE SHEPPARD, MILES, MAGOUN AND COLONEL BLUM, AGAINST THE PORTUGUESE GOVERNMENT.

I.

J. P. Hutchinson to the American Chargé d'Affaires at Lisbon.

CONSULATE OF THE UNITED STATES,
Lisbon, February 11, 1833.

SIR: By advices received from Washington I am informed that you are instructed by the Secretary of State of the United States to use your good offices with the government of her most faithful Majesty, in the case of Captain Hall and other citizens of the United States. In consequence of which I beg leave to lay before you a statement of facts relating to an act of injustice done by order of the judge superintendent of contrabands, and continued and persisted in by the authorities here.

On the 28th of January, 1828, the American ship Sheppard, James Hall master, arrived here from Antwerp with merchandise on freight for this port, and ten thousand and eighty-nine Spanish dollars on account of her owners. She discharged her cargo and took in a cargo of salt. About the middle of February, just as she was ready to sail for Havana, the officers of the judge superintendent of contrabands went on board said ship and took out the ten thousand and eighty-nine dollars under the plea that they were smuggled on board in this port; they did not observe the usual formalities of informing the consul of their intention, in order that he might have sent some person on board to serve as interpreter. Although the United States have no treaty with Portugal in this affair, by courtesy the consul was always informed of the intention of such a visit, that he might send with the contraband officers his vice consul to serve as interpreter for the master on board of the vessel to be visited.

By treaty with England and some other powers, no visit can be made of this kind without an order from the judge conservator or consul of the nation to which the vessel belongs.

Captain Hall entered all the cargo that was destined for this port, landed it according to law, took in a cargo and complied with all the formalities that were observed by foreign vessels entering and clearing at the custom-house.

American and other foreign vessels were frequently in the practice, for years before, of bringing specie from other countries here, sometimes landing it, at other times carrying it away, but never was there an instance of its being entered or declared at the custom-house, as is proved by certificates from these annexed to the "autos," as well as a certificate also joined to them, signed by the most respectable foreign merchants resident here, declaring that they were in the habit of not making any entry or declaration of it.

As the ship Sheppard was ready for sea, after waiting for several days, (the officers and seamen making their depositions before the proper au-

thorities,) finding there was no immediate prospect of getting her money returned, Captain Hall proceeded on his voyage to Havanna by bills of lading and other documents signed at Antwerp, as well as others received after from there, proving the fact of the purchase and shipment of the dollars, and declaring them to be the proceeds of a cargo of sugar which the ship Sheppard brought to that port from Havanna, there duly legalized and attested by the Portuguese consul at Antwerp. Depositions from the captain of a Russian vessel that was at Antwerp at the time, and afterwards arrived here, declaring he knew the fact of the shipment of the dollars there, and of a respectable Portuguese gentleman who came passenger in the Sheppard, and as before said of the officers and crew of the ship all joined to the "autos," the money was detained under the plea that it was smuggled on board in this port. A lawsuit was instituted for the recovery of the same, a sentence was given in the *relação* ordering the money to be restored. This sentence was embargoed; a sentence was then given against the owners. The second sentence was embargoed by Captain Hall, and third and final sentence given confirming the first, and ordering the money to be belivered up to the rightful owner.

On application at the Junta de Commercio (where the money was deposited,) for its delivery in conformity with the sentence, after many delays and frivolous excuses it was found that the Minister of the Interior had issued an "avizo" to the junta at the application of an informer calling himself Lorenzo Lido, as declared in the "avizo," not to deliver the money, but for the junta to send for the "autos," to examine and report their opinion thereon, which opinion was unfavorable to the owners. Said minister then sent the "autos" to the Desembargo do Paco for their opinion (*consulta*.) The papers have been returned to the Minister of the Interior, where I believe they now are.

Captain Hall and others have been now five years deprived of their property; have produced full and sufficient proof to satisfy any court of justice, and which has satisfied the court of the *relação*, that it was brought into the country by the ship Sheppard from Antwerp. There is not the shadow of proof that it was taken on board here; all the witnesses to that effect are false, contradictory, and not entitled to credit, some saying it was smuggled in bags, others in sailors' sleeves; and one man is made to appear as a witness, who is proved by a certificate from the hospital of St. José to have died there a year before he gave his deposition. Captain Hall has been obliged to contend against an unknown enemy—an informer without character, whom he cannot prosecute for damages, for loss and detention of his money—was not allowed the usual protection and services of his consul. From the best and ablest legal and judicial advice to be obtained here, I find the money is unjustly and illegally detained from the unfortunate and innocent owners, although all the formalities of the law have been complied with, which declare the seizure to be illegal, and this detention on no other ground than at the request of a man under the assumed name of Lorenzo Lido, who has had the audacity to commit the infamous act of producing false witnesses, contradicting each other, and one taking the name and residence of a man that had been dead twelve months before, and this against the united and disinterested evidence and documents before named, all duly legalized and proved.

I have no doubt you will use your best endeavors with the ministers of his most faithful Majesty, and that on their seeing the hardships already suffered

by the owners of this money, they will give the necessary orders to the "Junto do Commercio" to deliver it up to the rightful owners.

I have the honor to be, sir, with great respect,

Your obedient, humble servant,

J. P. HUTCHINSON,

Consul United States of America,

Deputy agent for the owners of the ship *Sheppard*.

THOMAS L. L. BRENT, Esq.,

Chargé d'Affaires of the United States, &c., &c., &c.

II.

G. W. Hopkins to Count Tojal.

LEGATION OF THE UNITED STATES,

Lisbon, July 19, 1849.

SIR: The undersigned, chargé d'affaires of the United States of America, has the honor to call the attention of your Excellency to the long pending claim of James Hall, master of the American ship "*Shepherd*." In bringing this claim once more to the attention of her Majesty's government, it would be supererogation on the part of the undersigned to enter into a minute statement of the circumstances out of which it originated. His distinguished predecessor—now no more—Mr. Kavanagh, in the course of a long correspondence upon the subject, has performed this duty with great ability, and the undersigned invites the earnest attention of your Excellency to his despatches addressed to your predecessors under date of the 21st of January and 10th of December, 1836, 12th of July and 2d of August, 1838, and 7th of May, 1839, which furnish, it is believed, a very faithful history of this claim, and a history which, so far as the undersigned is informed, has hitherto received the unqualified acquiescence of her Majesty's government.

A recapitulation, however, of the prominent and important circumstances will now be submitted, with the remarks of the undersigned, and under the sincerest hope that this claim, which is believed to be founded in the plainest and most undeniable principles of justice, will receive the fair and liberal consideration to which its intrinsic delicacy and merits so eminently entitle it.

It appears from the memorial of the claimant, addressed to the Secretary of State of the United States, on the 1st of December, 1834, that George Shepherd, of the State of Maine, and himself were the joint owners of the "*Shepherd*," which, on the 28th of January, 1828, arrived in the harbor of Lisbon, from Antwerp, with merchandise in freight, and ten thousand and ninety *Spanish dollars*, part of the proceeds of a cargo to Antwerp on the owner's account. That, in faithful conformity to the regulations and laws of this kingdom, Captain Hall discharged the ship's cargo and had nearly completed taking in a cargo for Havanna, when, on Sunday, the 17th of February, of the same year, Portuguese officers and soldiers, to the number of twenty-five, armed with muskets, and apparently ready for immediate hostility, went on board and took forcible possession of the ship. They demanded of Captain Hall twenty thousand dollars in metal; but he as-

sured them that there was no specie on board the "Shepherd," except ten thousand and ninety dollars, which he had brought from Antwerp. They demanded that: he refused to deliver it, and stated to them that it was American property, on board an American ship, and pointed them to the national flag then flying from her mast. He protested in vain that he had violated, in no respect, the treaty existing between the two countries; that he was lawfully performing his contemplated voyage from Antwerp to Havana, and claimed that he was entitled to protection instead of aggression. He produced the *bill of lading, verified by the consul of Portugal at Antwerp*, and other documents, showing that the specie was American property, and had been shipped at Antwerp. To all his remonstrances the only reply which Captain Hall received was—"we care not for your flag or nation; we shall take the money and you with it."

Captain Hall then requested permission to go on shore, if upon no other terms than as a *prisoner, leaving them in possession of the ship*, in order to consult with the American minister or counsel,—but this privilege was refused. The money was seized, and Captain Hall arrested and placed like a criminal between armed soldiers; he was conducted on shore, and after some hours detention he was liberated, but the money retained.

And this narrative, revolting as it may seem, is substantially a faithful representation of the facts, up to the seizure of the money, the arrest and liberation of Captain Hall.

The undersigned will now advert to the subsequent proceedings which were instituted in the court or tribunal of Relação and which resulted in a judgment in favor of Captain Hall, pronounced on the 29th of November, 1828, from which the informer appealed. On the 8th of August, 1829, this sentence was reversed, and Hall appealed. On the 9th of June, 1831, the court after a full examination of the additional evidence which had been procured, and a deliberate consideration of the whole case, solemnly affirmed the sentence of the 29th of November, 1828, in favor of Captain Hall, and ordered restitution of the money. This judgment, pronounced in the regular course of judicial proceeding by a court of competent jurisdiction, and upon a full investigation of the law and evidence, received on the 19th of December, 1831, the sanction of the chancellaria—and on the 21st of January, 1832, was duly registered by the Junta do Commercio. This sentence thus pronounced, received all the verifications required by the laws of this kingdom to make it conclusive and definitive. It was so regarded by the authorities of this kingdom, and the agent of Captain Hall was notified that on filing a bond with sufficient securities to obviate a frivolous objection which had been raised to the form of his power of attorney, the money would be paid over to him. On the 14th of February, 1832, the agent of Captain Hall filed the bond according to the requirements of the authorities of Portugal, but the money was not forthcoming. On the 29th of the same month the agent was informed that the Conde de Bastos, acting minister of the Interior, had ordered the money to be retained. These extraordinary proceedings were then communicated to the government of the United States and on the 13th of February, 1833, in conformity to the instructions of his government, the chargé d'Affaires of the United States remonstrated against them, and claimed due execution of the sentence of the 29th November, 1828. Notwithstanding this remonstrance and demand, on the 22d of April, 1833, Don Miguel granted decree Graça Especialissima, in favor of the informer, and ordered a re-

version of the case. And thus stood the claim when his government was overthrown and he banished from the kingdom.

On the 10th of June, 1843, more than five years after the rendition of the original sentence in favor of Captain Hall, and more than three years after its regular and definitive affirmance, the tribunal de prima instancia established by her Majesty's government, proceeded without notice to Mr. Hall or to J. P. Hutchinson, (the American consul,) his well known and highly respectable agent, and without the slightest intimation to the United States, to award a sentence of confiscation against Captain Hall, and under circumstances which subject it to the imputation of the most flagrant violation of the rules of proceeding prescribed by the 239th article, 2d clause of the royal decree of May 16, 1832. In confirmation of this statement, the undersigned begs leave to invite the attention of your excellency to a memorial addressed to her Majesty by Captain Hall's attorney in August, 1834, not because such a proceeding could, under the most scrupulous regard to forms or rules, have affected the adjudged rights of Captain Hall, but as furnishing part of the history of this unparalleled judicial proceeding. This memorial is as follows: "That in the said final trial before the relação (June 10, 1834) the legal formalities required by the 239th article, 2d clause of the decree of May 16, 1832, were not observed; the said decree provides that the 'feito,' after having been examined by the 'juez rellator,' (presiding judge,) shall be transmitted with his 'visto' (certificate of examination) to the other judges according to their relative seniority, and that each of them may retain it six days, take such notes as he may please, but shall write thereon only the word 'visto,' dating and signing it with his name. This was done by the 'juez rellator,' and the 'feito' was then passed to the four other judges (each named) all of whom examined it and affixed their 'vistos,' dates and signatures in accordance with the terms of the decree; it was not examined by any other judge *as is shown by the record*; when, however, the case was called up for trial on the relação, one of the judges who had so examined it (naming him) was absent, and instead of waiting for his appearance, or agreeing that the 'feito' should be examined by some other judge as the said decree provided, on the very day of the session when the trial took place, another judge was called in who had never examined the process, not only for days, *but even for hours*, and judgment was rendered revoking that which had been previously given in 1831. It appears, therefore, that of the five judges who composed this court, four only had complied with the requisitions of the decree referred to, two of whom were for acquitting Captain Hall and two for his conviction, and the decision was controlled by the voice of a judge who had not examined the record, embracing the process, evidence and arguments contained in one hundred pages or more of manuscript, and in clear violation of this decree. And such a proceeding as this, it has been maintained by a high law officer of the crown, has been conducted according to the "forms" of justice, and imparts to such a decision "absolute verity." Such a doctrine, tested by the standard of reason or of the law of nations, merits about as much consideration as the opinion of a judge utterly ignorant of the facts in the case which he undertook to decide.

If it were admitted that the order of Don Miguel was authorized by any law, or even by the fundamental organization of his kingdom, fortunately for the ends of justice the United States had previously become a party in the controversy; and before they can be concluded by the exer-

cise of a power so contrary to natural justice, it must be shown that they are bound to relinquish the great principles of the law of nations, and bow to the mandate of a despotism. The government of Don Miguel was absolute, perhaps, in both form and practice, as far as it regarded his own subjects; but so far as the citizens of the United States were concerned, they could not by any act or order of his be deprived of the rights secured to them by the more authoritative law of nations.

The undersigned begs leave to remark, that while the United States knows how to respect and "to consecrate the principle of the independence of the judicial power," it claims the right to distinguish between the edicts of an absolute monarch and the decrees of an independent judiciary. And with a just appreciation of this branch of the subject, the undersigned will attempt to maintain that his government has the most undoubted right to interfere with the sentence of June 10, 1834, and with the order of Don Miguel of the 22d of April, 1833, as contrary to the principles of justice and of the law of nations, and as acts of positive discourtesy and wrong to the United States, and as violative of the very independence of the judicial power which is invoked to justify both.

"This right of the State to which the captors belong to judge exclusively, is not a complete jurisdiction. The captors, who are its own members, are bound to submit to its sentence, though this sentence should happen to be erroneous; because it has a complete jurisdiction over their persons. But the other parties in the controversy, as they are members of another State, are only bound to submit to its sentence as far as this sentence is agreeable to the law of nations or to particular treaties; because it has no jurisdiction over them in respect either of their persons or of the things that are the subject of the controversy. If justice, therefore, is not done them, they may apply to their own State for a remedy, which may consistently with the law of nations give them a remedy, either by solemn war or by reprisals."—*Rutherford's Institutes*, vol. ii, p. 569-70.

The same distinguished author further declares that, "after the sentence of the inferior courts has been thus confirmed, the foreign claimants may apply to their own State for a remedy, if they think themselves aggrieved; but the law of nations will not entitle them to a remedy unless they have been actually aggrieved. And even if, upon their own report, they appear in the judgment of their own State to have been actually aggrieved, yet this will not justify it in declaring war or making reprisals immediately. When the matter is carried thus far, the *two States* become the *parties* in the controversy"—(Page 571.) In this case the sentence of the inferior court was duly affirmed—the claimant applied to his government for a remedy—his government believed him aggrieved, and granted him the remedy of peaceful negotiation, and by doing so, and insisting upon the execution of the definitive sentence in his favor, *the United States and the kingdom of Portugal* became the *parties in the controversy*.

Vattel, chapter vii, page 229, affirms the same principle for all the purposes of the case in hand. He says that, "Other nations ought to respect this right. And as the administration of justice necessarily requires that every definitive sentence regularly pronounced be esteemed just, and executed as such, as soon as a cause in which foreigners find themselves interested has been decided in form, the sovereign of the defendants cannot hear their complaints. To undertake to examine the justness of a definitive sentence is to attack the jurisdiction of him who has passed it. The

prince ought not then to interfere in the causes of his subjects in foreign countries, and to grant them his protection, *excepting* in the cases of a refusal of justice, palpable and evident injustice, or manifest violation of rules and forms, or, in short, an odious distinction made to the prejudice of his subjects or of foreigners in general."

In this case it is maintained that the original seizure was unjust and illegal, and committed under circumstances of positive insult to the United States; that it was solemnly adjudged by a court of competent jurisdiction that the seizure was unlawful; that the definitive sentence in favor of Captain Hall was reversed in manifest violation of the law of nations, in deliberate disregard of the rights of the claimant, and by a flagrant departure from the provisions of the royal decree of May 16, 1832.

It may be proper to remark, that the seizure was originally made upon the simple allegation that the specie was smuggled on board the *Shepherd* while she lay in the harbor of Lisbon. This charge was conclusively and unanswerably disproved by the Portuguese consul then at Antwerp, by a Portuguese gentleman who came passenger in the *Shepherd*, and by other evidence. The proof introduced in support of this accusation was such as might have been anticipated to sustain one so base and groundless. One witness was brought forward by the informer, who to conceal the infamy which attached to his own name, assumed that of a man who had been dead and buried one year before the perjured culprit was introduced to bear false testimony against his fellow-man. The court could not and did not hesitate to decide the case in favor of Captain Hall. Still this cold-blooded and remorseless informer, with unflinching step pursued his wicked purpose; and to furnish another pretext for the consummation of his fraudulent design, changed the form of the accusation, and alleged that the failure to mention the specie on the ship's manifest subjected it to confiscation. This expedient was destined to encounter the fate of the first, as far as the truth of it was concerned; for it was proved by merchants of the highest respectability that they were in the habit of receiving specie from vessels arriving in the harbor without its appearing on the manifest, and that no such regulation in law had been within their knowledge enforced against any other vessel. This evidence was irrefragably confirmed by *officers of the customs*, whose peculiar duty it was to know and to execute the laws, and who proved that no such law had been in force for many years. If such a law had ever existed, it had undeniably become obsolete, and was not therefore binding upon an innocent foreigner.

Such conduct on the part of the informer and of the witness in question calls for the severest animadversion, and stamps the proceeding, as far as they were concerned, as an attempt at legalized plunder. And yet it is to be regretted that a law officer of the crown has felt authorised to say that "it has not been demonstrated that the sentence in favor of the claimant was just, or that the one which reversed it was unjust; the law presumes the contrary, giving full effect to the latter, against which no proofs are now to be admitted."

This case, sustained by such authority, fully illustrates the wisdom and equity of the rule laid down by both Rutherford and Vattel. Without such a rule, it is apparent that the forms of justice might be made the means of giving impunity to the grossest wrongs, and encourage outrages to which no nation having a just regard for its own dignity, or to the rights of its citizens or subjects, could submit.

"Justice is administered in the name of the sovereign; the premier refers it to the judgment of the court. His part in this branch of the government is then to maintain the authority of the judges, and to cause their sentence to be executed." (Vattel, chap. xiii., page 139.)

If this be the law, as between a sovereign and his own subjects, how much more binding should it be considered as between the sovereign of one country and the citizens or subjects of another State. And in either case it condemns the despotic order of Don Miguel, who instead of *maintaining* "the authority of the judges," and causing "their sentence to be executed," was the first to violate this principle of public law, and to trample under foot the independence of his own judiciary.

The United States, by claiming due execution of the definitive sentence in favor of Captain Hall, infringe no privilege of an independent judicial power. They appeal, as of right they may do, from the arbitrary edict of an absolute sovereign (who assumed the prerogative of arresting the sentence of the judges) to the more potential authority of the law of nations, which has received the sanction of enlightened Christendom, and by which alone can the government of the United States consent that the dearest rights of its citizens shall be determined.

It is the arrest of the definitive sentence in favor of Captain Hall by the mere mandate of the sovereign of Portugal, in contravention of the law of nations, of which the United States complain. It was that mandate and that alone which invaded "the authority of the judges." It was that and that alone which arrested the execution of "their sentence."

Justice is unquestionably one of the most sacred obligations, and its faithful observance is enjoined by the soundest dictates of policy and duty. It is the surest guarantee of peace and amity. Wrongs have been and must continue to be the fruitful sources of strife and war. The *forms* of judicial proceedings can neither sanctify them, nor place them beyond the reach of inquiry and redress. The principles of public law forbid it; the ermine of justice forbids it; and in this memorable case, the voice of a deeply-injured man speaking from the grave forbids it.

Whatever respect and sanctity ordinarily attach to judicial proceedings, this case furnishes a warning exemplification of the wisdom of the exception which restricts and qualifies the general rule.

Suppose for example that it was the duty of ship masters to mention their own private funds upon the manifest, and throwing out of view for a moment all the fictions and technicalities which have been invoked to legalize the seizure of Captain Hall's property, the question thrusts itself upon the impartial and inquiring mind at every step of the investigation—what injury resulted to Portugal or to any subject of this kingdom, by the omission to mention the specie upon the manifest? Nay, what purpose could Captain Hall subserve by such omission? And what earthly good could have resulted to any human being from such a compliance? If, as has been shown, merchants of business and respectability, and custom-house officers of the kingdom were alike ignorant of the existence of such a law, common charity forbids the supposition that such an omission on the part of Captain Hall, (who was a stranger to Portugal and its laws,) proceeded from any intention to offend against any regulation of the kind. In every respect in which this question can be considered, notwithstanding the standard of law, justice, or humanity, the validity of the claim is manifest.

The United States have never for a moment contemplated the abandon-

ment of the claim of James Hall. The undersigned must superadd the expression of his opinion that they never can, without surrendering the first rights of a deeply injured citizen. The claim yet appeals with equal force to the magnanimity and justice of her Majesty's government, and the undersigned cannot but hope that the hard earnings of an honest and industrious mariner, won amidst the hardship and dangers of the ocean, will yet be refunded with cheerfulness and promptitude to his widow and his children.

In submitting this claim for the final decision of her Majesty's government, the undersigned confidently appeals to the past conduct of his own government, as affording the best and highest evidence of its uniform respect, justice and liberality to Portugal and to her subjects; and he expresses his honest conviction that the United States would not, under similar circumstances, have manifested the same spirit of forbearance towards most other nations. And animated still by the sincerest desires to preserve the friendship which has so long subsisted between the two countries, the President of the United States indulges the hope that his accession to the chief magistracy of the republic, whilst it affords a fitting occasion for one more appeal to the justice of her Majesty's government, may become the means of bringing this and other claims due to citizens of the United States, to a pacific, honorable and satisfactory adjustment. But it is the duty of the undersigned to say, that all the delay which has occurred in the settlement of this claim up to this period, can be regarded by the United States in no other light than as an aggravation of the original wrong. And he is commanded to insist upon the due execution of the definitive sentence of the 29th of June, 1831. If this be refused, the President of the United States will be left no alternative but to adopt such steps as his convictions of his constitutional duty may suggest.

And the undersigned, in order that he may the more fully comply with the wishes and expectations of the President of the United States, has the honor to request that this legation may be informed of the definitive determination of her Majesty's government at least as early as the first day of October next.

The undersigned will be at all times most happy to afford every facility consistent with his official duties, in furthering a satisfactory settlement of every question which remains to be adjusted between the two countries, and he will not disguise the hope, inspired by a knowledge of the just, liberal and enlightened views which your excellency is known to entertain, that negotiation may yet be crowned with the happiest success.

The undersigned avails himself of this occasion to renew to your excellency assurances of the distinguished consideration and esteem with which he has the honor to be your excellency's obedient servant,

GEO. W. HOPKINS.

His excellency CONDE DE TOJAL,

Minister of State for the office of Foreign Affairs, &c., &c.

III.

Count Tojal to J. B. Clay.

DEPARTMENT OF STATE FOR FOREIGN AFFAIRS,
March 22, 1850.

The undersigned Minister and Secretary of State for Foreign Affairs, has had the honor to receive the note which the predecessor of Mr. James Brown Clay addressed him on the 14th of July, 1849, renewing the application in behalf of the claim of James Hall, captain of the American schooner *Shepherd*, for the recovery of ten thousand and eighty-nine Spanish dollars, seized on board of the said schooner, on the 17th of February, 1828, by the officers of the revenue service, for violation of the laws.

The aforesaid captain complains that the supreme court of Lisbon having given judgment in his favor on the 29th of November, 1828, and the 9th of June, 1831, which sentences, he asserts, were only prevented from being carried into effect by the tyrannical assumptions of power (*prepotentia*) on the part of an usurping government; that seizure should again have been pronounced valid by the final judgment of the same supreme court, dated the 10th June, 1834.

Taking into consideration the reasons given by the predecessors of the undersigned to those of Mr. Clay, especially by Señor Vincensite De Castro, in his note to Mr. Washington Barrow, dated the 24th of February, 1843, in which he explained the inability of the government of her Majesty to alter any decision of the judicial power, which is declared absolutely independent of the executive by the fundamental laws of the monarchy, nothing further can be said on the subject under consideration. Nevertheless, the government of her Majesty, taking into due consideration the contents of the above mentioned note of Mr. Hopkins's, dated the 19th of July, 1848, and being desirous to furnish the government of the United States with some proof of its good faith, and the desire by which it is actuated to render any practicable relief to the parties interested, it sent to consult the principal officer of the council of State, a copy of whose opinion, given on the 7th inst., is herewith enclosed.

From the contents of this document, it will be seen that the sentence of the 9th of June, 1831, pronounced in favor of the claimant, James Hall, can have no stringent power nor effect, it having been expressly revoked as obviously unjust and invalid by the sentence of the 20th of June, 1834, a copy of which is also enclosed. I mean to say by this, that the first sentence was reversed by the proper authority, according to the law which was then in existence, and confirmed afterwards by the tribunal to which the jurisdiction belonged under the new law.

And moreover, that under the old law, the right of appeal in criminal cases (to which class that of the claimant must be understood to belong,) was not granted as a special favor, but that it was conceded, nevertheless, by *very special favor*, as it is expressed in the fourth article of the royal edict (*alvará*) of the 3d November, 1768, which was then in force, an appeal, however, which was only granted after the usurping government had consulted the supreme judicial authority and the revenue department, showing most conclusively that the concession was within the indisputable sphere of the law.

The restoration of the rights of her Majesty having led to the establishment of the legitimate government, and revived the decree of the 23d August, 1830, which recognises the validity of all the ordinary acts of justice or of the administration which have no tendency of a political character, there was established, by the decree of the 16th May, the right of appeal as an ordinary resort in criminal cases, and the decree of the 23d January, 1833, No. 55, which provides that all criminal and civil suits pending before the supreme courts of Lisbon and of Oporto, should be continued and adjudicated in the supreme court of the district where the party accused resides (*domicilio do reo.*) With all due formality, then, the supreme tribunal of justice forwarded the writs of process to the supreme court, in order that the law might be fulfilled, and the final judgment of the said supreme court being an irrevocable act, (*um acto consumado,*) and from which there is consequently no appeal, seeing that the case was duly considered and analyzed, and that the appeal by *very special grace* had been legally granted, that judgment must be considered binding and conclusive, in view of the complete independence of the judicial power, over which, as it has been stated, the executive has no control whatever.

The undersigned is sincerely grieved that the government of her Majesty, which is so anxious to cultivate relations of friendship and good understanding with the government of the United States, has no legal means in its power to comply with the wishes of said government, as expressed by Mr. Clay's predecessor, respecting the claim of Captain James Hall. The government of her Majesty is firmly convinced, however, that the American government, which so scrupulously respects and faithfully executes its own laws, will, in consideration of all the circumstances referred to, acknowledge the impossibility of any favorable consideration being given to the abovementioned claim.

The undersigned avails himself of this opportunity to renew to Mr. James Brown Clay, the assurances of his most distinguished consideration.

COUNT OF TOJAL.

LISBON, March 7, 1850.

MADAM: The Executive branch of the council of State, to whom your Majesty has deigned to apply for advice, under date of the 23d February of the current year, and through the medium of the Minister of Foreign Affairs, respecting the claim of Captain James Hall, of the American schooner "Shepherd," endorsed by the representative of the American government, near this court.

Considering that the sentence of the 9th of June, 1831, pronounced in favor of the claimant, James Hall, can have no stringency or effect, at this day, in consequence of its having been revoked and manifestly invalid and notoriously unjust, by the sentence of the 10th of June, 1834, rendered in the suit for revision of former judgment.

Considering that the first judgment was reversed by the proper authority, according to the law which was then in existence, and confirmed afterwards by the tribunal to which the new law gave exclusive jurisdiction,—that in criminal cases, in which category stands that of the claimant, the old law granted no new trial by especial grace, although such were conceded by very especial grace, as it is expressed in the 4th article of the royal procla-

mation, (alvara) of November the 3d, 1768,—that when this new trial was granted by the usurping government, although the above mentioned royal proclamation, (alvara) was in force, it was only granted after consultation with the supreme judicial authority, and the general superintendent for the prevention of smuggling, and that this act of concession, therefore, was ostensibly within the sphere of the law,—that the restoration of the rights of your Majesty having reinstated the legitimate government, and revived the decrees of the 23d of August, 1830, which recognised the validity of all ordinary acts of justice and of administration, having no tendency of a political character—that the decree of May 16, 1832, established the right of appeal as an ordinary resort in criminal cases,—that the decree of May 19, 1832, was in accordance with this principle, and that the decree of December 23, 1833, in the fifth clause, provides that all criminal or civil suits pending in the supreme court of Lisbon or of Oporto, shall be prosecuted and adjudicated by the supreme court of the district where the parties accused reside, and that the supreme tribunal of justice, with all due formality, then forwarded the writs of process to the supreme court, in order that the law might be fulfilled:

Considering that the sentence of the supreme court, which the claimant desires to set aside, is an irrevocable act (*um acto consumado*) which has become law, and from which there is accordingly no appeal:

Considering that the 139th article of the decree of May 16, 1832, requires that the judges should give a public trial to a suit previously to passing judgment upon it,—it being a matter of indifference as to what amount of time is expended in the examination, or where it takes place, seeing that the case was duly examined, and that the law does not authorize the setting aside of judgment, when the (trial) examination has taken place before the same tribunal where the judgment was awarded:

Considering, however, that the appeal by very especial favor was legally granted,—that it was an ordinary act of justice, in consequence of which the decree of August 23, 1830, could not be set aside—that the final sentence of the supreme court must be binding. That the judicial power is altogether independent of the executive authority; it appears, in the opinion of the administrative branch of the council of State, that the government, in view of the state of the case, can take no cognizance of the claim of James Hall. Your Majesty, however, will direct what you may deem most equitable.

Decision of the Supreme Court, etc., No. 2327.

LISBON, June 10, 1834.

Having examined these writs of error, in which Manuel Lorenzo Ledo is appellant and the captain of the American schooner James Hall appellee, and in which the right of appeal by most especial grace has been granted against the decisions of the supreme court, (p. 30, v. 4, and p. 100, v. 90,) for the purpose of ascertaining whether these writs contain any manifest flaw or notorious injustice, it is shown, from an examination of the writs and the proofs produced in them, that they are invalid and unjustly obtained against the manifest evidence of facts and the express and positive provision of the laws which regulate the case; inasmuch as it being required

by the 16th, 22d and 23d chapters of the regulations of the custom-house of Lisbon, that the masters of vessels should exhibit all the goods they have on board, by which expression is also included foreign coin, which may happen to constitute a portion of the freight, as it is expressly stipulated in the law of October 20, 1785. The above regulations were not only disregarded—as it is shown in the writs and the declarations contained in the pages fourteen and fifty-six—but that the very reverse was the case; the aforesaid captain having concealed and denied the possession of those Spanish dollars, and actually skulked away from the performance of his duty, as it is shown in the writs, pages third and fifth. Adding to this that, besides the invalidity of this act, resulting from these circumstances, there is also notorious injustice done in the decisions referred to, the same having been pronounced against the very evidence contained in the writ, which, in page seventy of the examination, sets forth that the Spanish dollars seized had been conveyed on board that vessel from this city of Lisbon; thereby committing a criminal act of smuggling, and avoiding the payment of duties, which in such a case was required by law. Therefore it is the judgment of this court, that the present appeal take precedence of the other, and the decisions contained in p. 30, v. 4, and p. 100, v. 90, are hereby revoked. The decision contained in page ninety-two is confirmed, for the reasons stated therein and on account of some of the fundamental principles laid down in it, and the appellee is condemned in the costs of suit.

LISBON, *August 16, 1849.*

The decision referred to above will cease to be in force from the moment that the contents of the present decision have been duly authenticated and promulged.

By order of the most excellent presiding officer of this tribunal, in perfect truth I affix my signature, to certify that it is done according to law.

DEPARTMENT OF STATE FOR FOREIGN AFFAIRS,
March 22, 1850.

According to law: By order of the principal or presiding officer of the council.

IV.

A. Rencher to Baron de Luz.

LEGATION OF THE UNITED STATES,
Lisbon, October 22, 1847.

The undersigned, chargé d'affaires of the United States of America, in answer to the note directed to him by his excellency J. J. Gomez De Castro, former Secretary of State, under date of the 21st of April, 1845, in reply to another forwarded by the undersigned, bearing date the 1st of

September, 1844, enclosing a claim made against the government of Portugal by the owners, officers and seamen of the American ship "Miles," of New Bedford, in the State of Massachusetts, has the honor to remark, that, in the said note of the 21st of April, some parts of said reclamation were reserved for further consideration, to the end that her Majesty's government might take further information thereon, and the undersigned was promised the honor of an additional note, giving the result of such information. The undersigned not having received the promised note feels constrained, as well by the order of his government as by the justice of the claim, to address to Baron De Luz, the actual Minister of State, some observations upon the said note of the 21st of April, and documents annexed, in the hope that he may be able to present this claim in such a point of view that her Majesty's government will no longer hesitate to render justice to these claimants, whose property has been taken and applied to repair a national vessel belonging to the government of Portugal.

The undersigned, in the observations which he is about to submit, will confine himself to the more important parts of this claim, and to such a statement of facts as are either admitted by the agents and officers of the Portuguese government, or are so clearly proved in the documents annexed to the claim that they cannot be denied or doubted.

The ship "Miles," of New Bedford, in consequence of damage received at sea, was obliged to put into the port of Mozambique, an island belonging to the Portuguese government, on the 31st of July, 1841, where she was condemned as unseaworthy and sold. Her cargo, which consisted of sperm oil, was taken out and stored under the direction of the proper officers of the island, who charged and received a large amount of duty upon such exportation—contrary to the universal practice of all civilized nations towards vessels in distress. (Vide doc. No. 8.)

In order to bring the said cargo and crew to the United States, William C. Downs, the master of the said ship "Miles," was compelled to charter of the governor of Mozambique a vessel belonging to the government of Portugal, called the "Real Principe D. Pedro," of which Jeronimo Romero was the commander. By this contract of affreightment the governor of Mozambique promised to put in readiness the ship "Real Principe D. Pedro," and to transport the cargo and crew of the ship "Miles" to Boston, in the State of Massachusetts, for the sum of six thousand dollars, in bills of exchange drawn by William C. Downs upon a mercantile house in Boston, and payable to the agent of the government. (Vide doc. No. 7, and doc. A.)

After this contract was entered into, William C. Downs discovered that the ship "Real Principe D. Pedro" was in an unseaworthy condition, making two inches of water per hour, while lying in the harbor of Mozambique; and he therefore applied to the governor of Mozambique to be released from his contract, and to charter an American vessel, the "Levant," which had arrived since his contract was made with the governor for the "Real Principe D. Pedro," and which he could charter upon more favorable terms. This was refused by the governor, and he was therefore compelled to put his oil on board the ship "Real Principe D. Pedro," unseaworthy as he had found her to be.

The "Real Principe D. Pedro" left Mozambique on the 10th of December, 1841; and it appears from the evidence, both of Captain Downs and of Commander Romero, that the ship, which was making two inches of

water per hour before she left the harbor of Mozambique, was, on the 31st of the same month, without experiencing any storms or very bad weather at sea, making fifteen inches of water per hour, which gradually increased, owing to the rotten state of the vessel, until she was found to be making forty-six inches of water per hour. In this dangerous and sinking state, Commander Romero determined to make for some port of safety; and, falling in with a Portuguese vessel bound for Pernambuco, he resolved to make for the same port in company with this vessel, where he arrived on the 19th day of February, 1842. (Vide protest of Captain Downs, No. 2, and that of Commander Romero, doc. D and C.)

Soon after the arrival of the ship at Pernambuco, a survey was held on board, and the surveyors declared that the leak was in her bottom, and that she must be hove down; showing, evidently, that the leak existed before she left Mozambique. The surveyors further declared that the expense of repairing the ship would amount to 15 or 16,000|000 reals, and that her value was 30,000|000 reals. Thereupon, Commander Romero resolved to sell the cargo and apply the proceeds to the repair of the ship. The oil was therefore sold under the direction of the Portuguese consul, at Pernambuco, against the most earnest protestation of Captain Downs and of the American consul, and the whole of the proceeds applied to the repair of the ship. (Vide doc. No. 2, 19, and doc. M.)

The value of the oil, thus taken and applied to the repair of a national vessel, constitutes a large portion of the claim now preferred against the government of Portugal; and it seems to the undersigned, that this simple statement of facts is sufficient of itself to establish the justice of the claim, and to induce the government of Portugal at once to make compensation, not only for the oil actually applied to the repair of the vessel, but also for the oil wasted or purloined while under the protection of the Portuguese authorities at Pernambuco.

The undersigned was induced to believe, from the justice and liberality which has heretofore animated the government of Portugal, that if, from any supposed necessity or misconception of the laws of nations, her officers and agents abroad should seize and appropriate to her use and benefit the property of the citizens of another government, she would, as soon as it was made known to her, hasten to repair that injury by a just and liberal compensation. He is, therefore, surprised to find, in the said note of the 21st of April, opposition made to a claim which seems to him so well founded in justice, and sustained by the commercial codes and usages of the most enlightened and commercial nations.

It is stated in the protest of Commander Romero that he sold the cargo and applied the proceeds thereof to the repair of the ship, because he could not raise money in Pernambuco upon the credit of the Portuguese government. This is an admission that it was the duty of the Portuguese government to repair its own ship, if it could have raised the funds in Pernambuco. Commander Romero says this could not be done; but the undersigned by no means admits the truth of this assertion. On the contrary, he does not believe it. He cannot believe that 15 or 16,000|000 reals, the sum at which the repair was estimated, could not have been raised in Pernambuco on the credit of the Portuguese government. The facts show it is not true; for it is remarkable that, while the repair of the ship was estimated at 15 or 16,000|000 reals, the actual expenditure is put down at 33,865|278 reals. From this latter sum deduct 15,979|352

reals, the sum raised by the sale of the oil, and there would remain a balance of 17,882|290 reals; most of which must have been raised in Pernambuco upon the credit of the Portuguese government. The reason, therefore, assigned by Commander Romero for having sold the oil, to repair the ship, is not true, in point of fact; though, if it had been true, it would only show the obligation of the Portuguese government to make a just and liberal compensation.

The undersigned having shown, as he trusts and believes, that this claim is well founded in justice, will now proceed to show that it is equally sustained by the ablest writers on maritime law, and by the commercial codes and usages of the most enlightened nations.

His excellency the Secretary of State, in his said note of the 21st April, has endeavored to show that this is a case of general average; but the undersigned has sought in vain to find in it a single circumstance which could bring this claim within the principles of general average. When the captain of a ship at sea, in consequence of stress of weather or otherwise, *voluntarily* cuts away a mast, or throws overboard a part of her cargo, for the safety of the ship and cargo, the ship and the balance of the cargo is made to contribute to the payment of the part thus *voluntarily* sacrificed for their safety and benefit; and each one is made to contribute in proportion to the value of the ship and cargo thus saved. This is what is called general average, and it is just and proper; for, but for the voluntary sacrifice of a mast, or the jactation of a part of the cargo, the whole might have been lost and wrecked. The ship and cargo thus saved, is bound by the principles of general average to make contribution; but this must be done at the end of the voyage, where alone general average ought to be adjusted. (Vide Stevens and Benecke on General Average, pp. 56, 96 and 268.)

But what circumstance is there in this case which could bring it within the principles of general average? No part of the ship was *voluntarily* sacrificed at sea for the safety of the ship and cargo, and which made it necessary to seek a port of safety. On the contrary, the facts show that the ship was unseaworthy before she left Mozambique; so rotten in her condition, that the leak, which was making two inches of water per hour before she left Mozambique, made forty-six inches per hour before she reached Pernambuco; so rotten in her condition, that the expense of her repair at Pernambuco exceeded by more than one hundred per cent. the estimate made by surveyors; and so rotten in her condition, that the expense of her repair far exceeded the estimated value of the ship. To make this a case of general average, and to apply the whole cargo, at an intermediate port, as in this case, to the repair of the ship, and then abandon the voyage altogether, would be such a perversion of the principles of general average, and such a gross act of injustice and fraud, that neither Portugal nor any other enlightened commercial nation would submit to it.

The undersigned will now refer to the laws and usages of some of the most enlightened and commercial nations on this subject.

In England, in the court of king's bench, in a very recent case, "where a ship was compelled to go into port to repair damages *occasioned by tempest*," the court decided, "that the expenses of the repairs themselves were not a subject of general average, nor were the wages and provisions of the crew during her detention in port."—(Vide Maule & Selwin's Reports, page 114.)

In France, where a vessel had considerably suffered by storms, so as not to be able to proceed on her voyage, without a risk of being lost, went into a port for repairs, the court of admiralty at Marseilles decided: "That the charges of repair, the cost of masts, sails, and other apparel purchased, are excluded from general average." Emerigon who reports this case, adds: "That the practice of the other courts of admiralty of the kingdom correspond with these principles."—(Vide Stevens and Benecke, page 126; Ordonnance de la Marine, tom. 1er, page 625; and Code de Commerce, art. 403, sec. 3ème.)

Such are the principles adopted in the commercial codes of these two great and enlightened nations, on the subject of general average; such are the principles adopted in the courts of the United States; and such are the principles to be found in the commercial code of Portugal herself. In article 1,817 of said code it is expressly stated:

"Nao serao reputadas avarias grossas, posto que voluntariamente feitas, e por deliberações motivados para bem do navio e carga, as despezas cansadas por vícios internos do navio, por sua inavigabilidade, on por falta, e negligencia do capitao, on gentes de tripulação. Todas estas fazem a cargo do capitao, on doa navio."

Having shown from the principles of general average, as well as from the codes and usages of the most enlightened nations, that this cannot be considered a case of general average, the undersigned will now submit some observations as to the amount of damages to which the claimants are entitled.

As to the quantity of oil, there can be no doubt. In the protest of Capt. Downs, he says there were placed on board the "Real Principe Dom Pedro," at Mozambique, *two hundred and forty-eight casks*, well coopered, filled, and placed on board "*in good condition*." Commander Ramero, in the bill of lading, admits that he received this number on board, in the same good condition. Whether these casks contained 800, 850, or 880 barrels, would, of course, depend on the size of the barrel which might be taken as the standard of measurement. What, therefore, the Minister of State, in his said note on the 21st of April, considers a remarkable contradiction, is more apparent than real.

As to the value of the oil, there can be but little doubt. In the custom-house at Mozambique, where the price of oil was said to be low, it was valued at 34,092||800; and, in the account of A. J. Nobre, with the ship Miles, the amount of freight, of which the oil constituted the largest portion, is stated at 42,000||000. (Vide doc. No. 8, and doc. 11.)

The value of the oil, whether applied to the use and benefit of the Portuguese government, or allowed to be wasted, while under the care and protection of her authorities at Pernambuco, must fall as a charge upon the government of Portugal. So, likewise, the losses and damages sustained by the claimants, in consequence of the unseaworthy condition of the "Real Principe Dom Pedro," and her failure to perform the voyage to Boston, according to the contract of affreightment. "It is the first duty of the master," says Abbott on maritime law, "to provide a vessel, tight and staunch, and furnished with all tackle and apparel necessary for the intended voyage." (See also Emerigon, tom. 1er, pp. 273, 274 et 275. Roccus, not. 19, 57 and 69. Ordonnance Française, Ordonnance von Rotterdam, 2d Magens, page 101, art. 124.) "For, if the merchant suffer loss or damage," says Wellwood, in his *Sea Laws*, "by reason of any insuf-

ficiency of these particulars, at the onset of the voyage he will be entitled, to a recompense." In l'Ordonnance Française, liv 3eme, tit. 3eme, art. 12, it is said : " Que si le marchand, peut prouver que le bâtiment, au moment de mettre à la voile, se trouve incapable de poursuivre le voyage, le maître du navire doit perdre le frêtement et prêter à l'armateur les dommages et intérêts." Valin, in his commentary upon this article, cites an observation of the Watson, to wit : " That the punishment of the master, in this case, ought not to be thought too severe, because the master, by the nature of the contract of affreightment, is necessarily held to warrant that the ship is good, and in perfect condition to perform the voyage in question, under the penalty of all expenses, damages, and interest."

From all the foregoing facts and considerations it results that the claimants are entitled to recover :

1st. The money paid into the custom-house at Mozambique, upon the exportation of the oil; which part of the claim is admitted to be just in the said note of the 21st of April.

2d. The value of the oil placed on board the "Real Principe Dom Pedro," at Mozambique, and which was either sold and applied to the use and benefit of the government of Portugal, in the repair of one of her national vessels, or allowed to be wasted or purloined while in the care of and under the protection of the Portuguese authorities at Pernambuco.

3d. The expenses and damages sustained by the claimants in consequence of the unseaworthy condition of the "Real Principe Dom Pedro," and her inability to perform the voyage to Boston, according to the terms of the contract of affreightment.

4th. These various sums, with interest thereon till paid, constitute the amount of the claim now sought to be recovered from the Portuguese government; and sustained as it is by the principles of common justice, by the uniform opinions of the ablest writers on maritime laws, as well as by the commercial codes and usages of the most enlightened nations, the undersigned cannot doubt its entire success.

The undersigned avails himself of this occasion to renew to Baron da Luz assurances of the distinguished consideration with which he has the honor to be his obedient servant,

A. RENCHER.

His Excellency BARON DA LUZ, &c., &c., &c.

V.

Mr. Hopkins to the Duke of Saldanha.

LEGATION OF THE UNITED STATES,
Lisbon, March 21, 1848.

SIR: On the 22d of October last, my predecessor addressed a letter to his excellency Baron da Luz, then minister of foreign affairs, in relation to the claim of the owners, officers and seamen of the American ship "Miles," of New Bedford, in the State of Massachusetts, in reply to another addressed to him by his excellency J. J. Gomez de Castro, a former Secretary of State for Foreign Affairs, under date of the 21st April, 1845. To this letter of my predecessor no reply has been received; and,

under recent instructions from my government, it becomes my duty to invite the early and favorable attention of your excellency to the subject. The delay which has already occurred has been attended with great injury to the claimants; and, as I must be permitted to say, in my opinion, under circumstances of peculiar aggravation and hardship.

Your excellency will find by reference to the history of this transaction that, without any wrong or allegation of wrong on the part of the owners, officers or seamen of the ship "Miles," their property has been taken without their consent, and without remuneration, and appropriated to the repair of a national vessel belonging to her Majesty's government. Under what circumstances this illegal confiscation of the property of American citizens has been made, it is unnecessary now to speak, as the evidence taken, as well on behalf of the authorities of her Majesty's government, as of the claimants, fully explain them; and I cannot doubt that your excellency will meet the just expectations of my government, and bring this claim to an early and favorable decision.

I will avail myself of this occasion to renew to your excellency assurances of my distinguished consideration.

G. W. HOPKINS.

To his Excellency the DUKE OF SALDANHA,
Minister of Foreign Affairs, &c., &c.

VI.

G. W. Hopkins to Gomez de Castro.

LEGATION OF THE UNITED STATES,
Lisbon, November 7, 1848.

SIR: The undersigned, chargé d'affaires of the United States of America, in obedience to a despatch recently received from his government, invites once more the prompt and earnest attention of her most faithful Majesty's government to the unadjusted claim of the owners, officers and crew of the American ship Miles.

The correspondence upon this subject has been called for by the Senate of the United States, and it is important that the ultimate determination of it may be laid before that body, if practicable, during the approaching session of Congress.

This claim it is believed was fully matured for final consideration as early as 1845, and notwithstanding it was then delayed at the instance of your excellency, then minister of foreign affairs, in order to procure further evidence on the part of the Portuguese government, no notice seems to have been taken of it since, and the despatch of Mr. Rencher of October, 1847, and the note of the undersigned of March last have to this hour remained unanswered, except that the undersigned was informed that the claim had been referred to the minister of marine for his examination and report. Under these circumstances, the undersigned does not perceive that longer delay in its adjustment can be productive of any good; and entertaining the conviction that the claim is not only just, but originated in an act of arbitrary power inconsistent with the rights of his government, he indulges the hope that the subject will be taken up and considered, free from the influ-

ence of opinions heretofore entertained and expressed by your excellency, and that upon a careful review of the facts and of the well settled principles of law applicable to them, her most faithful Majesty's government will see the justice and propriety of making ample indemnification to the parties aggrieved.

The undersigned is too familiar with the high and distinguishing characteristics of the Portuguese nation to expect any thing from its fears which its justice may deny, and he would do wrong to himself and violate the friendly sentiment entertained by the public authorities of his own country for the government and people of Portugal, if he could yield to the influence of such unworthy motives. But the undersigned esteems it nevertheless both his privilege and duty to declare his opinion, that the government of the United States cannot abandon the claim, without compromising the just rights of its injured citizens.

The undersigned avails himself of this occasion to renew to your excellency the assurance of his high consideration and esteem.

GEO. W. HOPKINS.

To his Excellency J. J. GOMEZ DE CASTRO,
Minister of Foreign Affairs, &c., &c.

VII.

Mr. Hopkins to Count Tojal.

LEGATION OF THE UNITED STATES,

Lisbon, July 25, 1849.

SIR: The undersigned, chargé d'affaires of the United States of America, in the further fulfilment of the instructions of his government, has the honor to call the attention of your Excellency to the claim of the owners, officers, and seamen of the American ship Miles.

This claim was presented to her Majesty's government for liquidation on the 20th of August, 1844. On the 21st of April, 1845, his Excellency Visconde de Castro, then minister of foreign affairs for this kingdom, addressed a note to Mr. Rencher, then chargé d'affaires of the United States near the government of her most faithful Majesty, in which he admitted the justice of certain items of this claim, but pronounced the remainder inadmissible, and asked for further time to procure additional information from Mozambique, and promised, when that should be received, a further reply.

On the 22d of October, 1847, (no further reply having been received) Mr. Rencher addressed to his Excellency Baron da Luz, then in charge of the office of foreign affairs, an elaborate reply to the note of Visconde de Castro, of the 21st April, 1845, and a reply which his government believes furnished a "conclusive argument upon the disputed points." On the 21st March, 1848, the undersigned, having been honored with no reply to the note of his predecessor, addressed another to his Excellency the Duke of Saldanha, then minister of foreign affairs, inviting his attention to the subject, complaining of the delay which had occurred, of the great hardship to which the claimants had been subjected, and expressing the hope that the claim would be brought to an early and favorable conclusion. In a short time after that, the Duke of Saldanha took charge of the office of the inte-

rior, and the portfolio of foreign affairs again passed into the charge of his Excellency the Visconde de Castro. This construction of the ministry encouraged and justified the expectation that as he had previously investigated the claim, and made it the subject of a formal despatch as early as 1845, and that its further consideration had then been delayed at his instance, that the claim would be brought to an early determination. But this expectation having been disappointed up to the 9th of November, 1848, the undersigned, in another note of that date, written "in obedience to instructions recently received from his government," invited "once more" the prompt and earnest attention of her Majesty's government to this claim. Yet, notwithstanding the Visconde de Castro remained in charge of the office of foreign affairs, (with a few days exception, occasioned by a temporary indisposition,) up to the 18th of June, 1849, when your Excellency was called to succeed him, no further notice was taken either of the note of Mr. Rencher of the 22d October, 1847, or of those of the undersigned of the 21st March and 9th November, 1848, except that the undersigned was informed by his Excellency the Duke of Saldanha, in his acknowledgment of the reception of the note of the 21st March, 1848, that the subject had been referred to the minister of marine for his examination and report.

Under these circumstances, the undersigned has the honor to submit the subject for the definitive determination of her Majesty's government, unless it can be manifestly shown that still further time may be necessary to a just decision of it, which is not anticipated. The undersigned cannot but hope that a claim so just, and which appeals so strongly in behalf of the injured parties, will be allowed and liquidated without further delay.

In the present state of the negotiation, the undersigned will not be expected to offer one word in support of the claim, but it is his duty to say, that his government believes that the case of the ship *Miles* constitutes a fair and valid claim upon the government of Portugal, and that its liquidation is due "no less to the violated rights of our citizens than to our own self-respect." Indemnification is therefore insisted upon.

The attention of the President has been anxiously devoted to that class of his public duties which relate to the foreign affairs of his country, and it is due to candor that the undersigned should say, that he has deeply regretted to find the negotiation upon the claims of certain American citizens against the government of her Majesty in a state so entirely unsatisfactory. Occurrences also of recent date (one of which the undersigned had the honor to bring to the knowledge of your immediate predecessor, on the 13th March last, and another now awaiting additional evidence) are well calculated to excite a still deeper solicitude on the subject of our relations with the government of Portugal.

The undersigned has heretofore referred to the sincere and anxious desire entertained by the President of the United States to administer the government in the spirit of peace. But, bound by the most solemn and imperative obligation to assert and to maintain the just rights of his fellow citizens, no subordinate considerations can turn him aside from the faithful performance of this high duty.

In submitting the claim of the owners, officers and crew of the American privateer "General Armstrong," and that of James Hall, of the American ship "Shepherd," the undersigned felt it to be his duty to ask that this legation might be informed of the definitive determination of her Majesty's government in these cases at least by the first day of October

next. The same reasons which induced the designation of that day in those cases equally apply to this. It is the duty, therefore, of the undersigned to declare, as he now does in the spirit of entire frankness, that in these cases "the period of procrastination has gone by," and a delay beyond the day indicated will be construed into a denial of justice.

If the authorities of her most faithful Majesty's government shall bring to the consideration of these claims, as the undersigned trusts they will do, the same enlightened spirit of justice, conciliation and amity which the President of the United States so sincerely cherishes, the hope may still be indulged that they will be settled upon terms just to the injured claimants and honorable to both nations. This accomplished, the future holds out to the statesmen of both countries the most persuasive incentives for improving the commercial relations now subsisting between them, and with incalculable benefits to the people of both.

There are other claims involving small amounts, but not the less entitled to consideration on that account, to which the undersigned invites the prompt attention of your excellency. That of Osborne brothers and company, of Oporto, was (it is presumed from a despatch of Mr. Rencher of the 9th of July, 1846,) presented for adjustment in the month of February, 1845, and as far as the undersigned is informed, no reply has been made to the several notes from this legation upon the subject. The parties have a right to expect that it will be brought to an early and favorable determination, and the undersigned trusts that their expectations will not be much longer disappointed. The papers which accompanied the claim are again referred to, as fully explanatory of the demand.

The claim of the master of the American ship "Ganges," which the undersigned presented for liquidation, with the accompanying documents, on the 12th of July, 1848, seems to have escaped the notice of your predecessors, and hence it becomes necessary to invite the attention of your excellency to that subject.

The undersigned must repeat the expression of his hope that the case of the underwriters, owners, officers and crew of the American schooner "Colonel Blum," seized and destroyed at the Island of Sal, by the local authorities of her Majesty's government, will be brought to a determination satisfactory to the parties with the least practicable delay.

The claim of the owner of the American ship "Bolton," of Stonington, Ellery Nash, master, for the unlawful seizure of a boat, by order of the director of the custom-house of Ponta Delgado, at the Island of St. Michael, was presented by the undersigned on the 30th of June, 1849. This claim seems to be so fully sustained by official evidence, and has been so fully sanctioned by the competent authorities of this kingdom, that the undersigned must indulge the hope that it will be promptly settled.

In addition to these, and perhaps others to which the undersigned has not adverted in this despatch, other complaints have been made, which from time to time have claimed the attention and interposition of this legation. Among these may be mentioned two cases of very great hardship. The first is that of the American ship Florence, Master Woodward, bound from Cronstadt to Madeira. After arriving at her destination with a clean bill of health from the Portuguese consul, without a single case of sickness during her passage or at the time of her arrival, she was ordered to Lisbon to perform quarantine. Upon her arrival here she found no accommodations or facilities at the lazaretto for complying with the quarantine regulations, and

without any fault on her part, she was detained forty days or more at an expense of more than two thousand dollars, being nearly twice the sum of freight from Cronstadt to Madeira.

The case of the brig Long Island, from New York to Oporto, formed another subject of the most earnest complaint. She was detained, with perhaps a corresponding expense, more than twenty days, while in both cases the nominal time required was from five to eight days. In these cases the undersigned has not yet received the necessary specifications, and he awaits these, which will probably come to him under the commands of his government. In the meantime he must express the hope that something will be done to relieve American commerce from such vexations and embarrassment. The protection of the public health is both the right and the duty of every well regulated government, but the constant complaints as to the manner in which the boards of health of this kingdom perform their duties, justify the apprehension that great and cruel abuses are committed upon those engaged in the commerce of Portugal, through the present organization of these boards.

The undersigned, with a full knowledge of the history of the claims of the "General Armstrong," James Hall, and the ship "Miles," with his convictions as to their justice and validity, and of the views of his government in relation to them, may be permitted to express the sincere solicitude which he feels for the early and satisfactory adjustment of them. The ancient city of Lisbon, the beautiful capital of the Portuguese monarchy, with its unsurpassed salubrity, its perennial season of fruits and flowers, its broad, secure and placid harbor, is the nearest European port to the western continent, which is destined to team with its multiplied millions of population and wealth. Not one of the staples of this kingdom, except to a most limited extent, is produced in the United States, and a more liberal policy offers to the former, the benefits of a market now large and still enlarging, and to the latter advantages which might be accorded without affecting injuriously any great interest of this kingdom. The two countries should be brought into closer proximity, and united more firmly by the bonds of commerce and of friendship, and the undersigned trusts that both your Excellency and himself may live to see and bless the day when these hopes shall be realized.

The undersigned congratulates himself, therefore, that these subjects are now committed to the care and consideration of a minister who combines with an enlarged and comprehensive knowledge of public affairs the lessons of a ripe experience as to the practical questions to which he has incidentally alluded; and the undersigned will not permit himself to doubt, that two nations animated by the love of peace, and with so many inducements for preserving the relations of friendship which have so long existed between them, will bring the questions now pending to a satisfactory and happy issue.

The undersigned, fully sensible of the highly delicate and responsible duty which has thus been devolved upon him, has endeavored to perform it with all the courtesy and kindness consistent with sincerity and frankness; and in conclusion, he tenders to your Excellency, assurances of the distinguished consideration and esteem with which he has the honor to be your Excellency's obedient servant,

GEO. W. HOPKINS.

His Excellency CONDE DE TOJAL,

Minister of State for the office of Foreign Affairs, &c., &c., &c.

VII.

[Translation.]

Count Tojal to Mr. J. B. Clay.

DEPARTMENT OF STATE FOR FOREIGN AFFAIRS,

April 11, 1850.

The undersigned, Minister and Secretary of State for Foreign Affairs, referring entirely to the note of Viscount de Castro, of the 25th April, 1845, to Mr. Abraham Rencher, and to that of the 17th October of last year, addressed to Mr. G. W. Hopkins, predecessors of Mr. J. B. Clay, in regard to the pretensions of those interested in the cargo of whale-oil of the American vessel *Miles*, Captain Downs, to be indemnified for the damages which they allege were caused by the authorities at Mozambique, and by the consul of Portugal at Pernambuco, has the honor to address Mr. Clay to signify to him that desiring, as soon as possible, to see this claim settled, he has not ceased to urge the minister of marine to furnish him with the information yet wanting in order fully to answer Mr. Clay. The undersigned, however, thinks it proper to assure Mr. Clay, as his predecessor had already informed Mr. Rencher, that her Majesty's government is ready to refund the amount of duty levied at Mozambique on the re-exportation of the oil shipped on board the bark *Real Principe Dom Pedro*, should it have been paid, for the reason that it is an established principle that when a vessel is compelled in distress to seek a harbor, neither the vessel nor its cargo pay any duty whatever, when the cargo is re-exported, and when no commercial transaction has been effected. Her Majesty's government is likewise resolved to attend to the claims of the captain and mate of the *Miles*, when it shall be known, for which orders have been given, what became of the objects they claim, in order to restitute them or pay for their value.

As respects the gross average in relation to the cargo, the undersigned cannot dissemble the sentiments entertained by her Majesty's government, on perceiving that the government of the United States is not satisfied with the incontrovertible reasons which have been submitted to show that the bark *Real Principe Dom Pedro*, cannot in any way be considered in this case as a national vessel, but merely as any other merchant vessel from the moment it was chartered, according to the usual mercantile practice, to take a cargo to the port of Boston, since from this very fact it was undoubtedly subject to the general maritime laws in vigor.

The legal account of gross average on the cargo, vessel and freight, drawn up at Pernambuco, a copy of which was transmitted to Mr. Rencher in the note of the 25th April, above mentioned, absolves her Majesty's government from the payment of any balance to those interested in the cargo of oil in question, nearly one-half of which had leaked out of the casks during the voyage (as is frequently the case with such an article) and not at Pernambuco, as Captain Downs pretends, and what was there unladen and sold did not cover the expenses of putting into that port in distress. Nevertheless her Majesty's government, desirous to give a further proof of its good faith and ardent wishes to contribute, by all the means in its power, to the maintenance of the most perfect harmony and good understanding with the government of the United States, which the amicable relations

and mutual interests happily existing between the two countries require; the undersigned will remark that the nature of this case being *purely mercantile*, it might be referred to the decision of arbiters, without impairing the dignity of the two governments; *each of the parties* appointing three or more merchants of Lisbon, with power to consult any other persons specially well versed in commercial and maritime laws.

It therefore appears to the undersigned that the mode proposed would be the most regular and practicable by which to decide with impartiality this *particular* claim; and he flatters himself that Mr. Clay will do justice to the sentiments by which her Majesty's government is influenced towards that of the United States, and will give credit to its deep solicitude to bring to a settlement, as soon as possible, and *conformably to justice*, not only this claim but *all* the others still pending. The undersigned in the meanwhile will have all the documents collected upon which to meet the foundation of a decision by the said arbiters, in order that when the consent of the government of the United States arrives, it may be carried into effect without delay.

The undersigned seizes this opportunity to reiterate to Mr. J. B. Clay the assurances of his most distinguished consideration.

CONDE DE TOJAL.

IX.

Mr. Clay to Count Tojal.

LEGATION OF THE UNITED STATES,

Lisbon, April 13, 1850.

The undersigned, Chargé d'Affaires of the United States of America, has the honor to acknowledge the receipt of the note addressed to him by his excellency the Conde de Tojal, dated the 11th instant, upon the subject of the claim of the owners, officers, &c., of the ship *Miles*, which his excellency proposes to refer to the arbitration of certain merchants of Lisbon.

The undersigned, as is his duty in all cases, will transmit a copy of this note to his government at the earliest opportunity. He however feels it due to candor that he should say to his excellency, that in his opinion there does not exist the slightest probability that the proposition of his excellency will be acceded to.

The undersigned renews to his excellency assurances of the distinguished consideration with which he has the honor to remain his obedient servant,

JAMES B. CLAY.

To his Excellency the CONDE DE TOJAL,

Minister and Secretary of State for Foreign Affairs.

X.

[Extract.]

J. B. Clay to Count Tojal.

LEGATION OF THE UNITED STATES,

Lisbon, November 17, 1849.

* * * * *

The undersigned is instructed by his government to bring to the attention of the government of her Majesty, and formally to present for indemnification, a series of claims growing out of the wanton and illegal seizure and confiscation of the American brig *Magoun* by the Portuguese authorities. These claims are: First, that of the owner of the brig; second, that of the crew who survived the barbarities of the prison into which they were thrown at Mozambique, and of the relatives of the men who perished in consequence of those barbarities; and third, that of Mr. Charles Dupuy, a passenger on board the ill-fated *Magoun*, who was seized while under the protection of the American flag, and with the crew of the brig thrown into prison, where, after remaining in confinement for a period of eleven months, he was finally forced to purchase his freedom from the authorities of Mozambique.

The history of the whole case, or series of cases, is briefly this: The American brig *Magoun*, Horatio N. Russell, master, was chartered at Rio de Janeiro on the 1st day of July, 1847, by a merchant named Antonio Fernandez Lima, for a voyage to the east and west coasts of Africa with a lawful cargo, to whatever ports the agent of the charterer shall designate, he being a passenger on board. She was also to take what passengers she could accommodate. She left Rio de Janeiro on the 19th July, and by the direction of the agent of the charterer put into the river Angoshe. She arrived at the anchorage in that river on the 12th September, when she discharged her cargo and took on board some sand as ballast. On the 14th November she hove up anchor to proceed on her voyage, but made only a mile or two from her anchorage, when, on account of head winds, she came to.

On the 21st November a brig and schooner under the Portuguese flag and twelve boats of British men-of-war, entered the river, as was understood, for the purpose of bombarding the town of Angostia, which was in the possession of the Moors. The captain of the Portuguese brig-of-war, the *Juan de Castro*, went on board the *Magoun*, produced the treaty made with the United States, and said the captain had broken it by entering the Angostin river. The captain of the *Magoun* informed him "that he was not aware of its being a Portuguese place, as they had never had possession, nor had their flag flown, nor had the government ever had any resident there, it being under a Moorish sultan, who did not acknowledge the Portuguese." The Portuguese captain then said he should put a prize crew on board the *Magoun* and send her up to Mozambique. Afterwards the captain of the *Magoun* was employed by the major commanding the Portuguese forces in carrying some letters to the sultan of Angostia, which he did under the flag of his country, and upon his refusing to convey others, the Moors having threatened his life if he did so, his brig was taken possession of by the Portuguese authorities, and he sent prisoner on board the

Portuguese brig, notwithstanding his protest against such violence beneath his flag. After remaining a prisoner for forty-eight hours on board the man-of-war, he was sent on board his own vessel, which was then taken by a prize crew to Mozambique, where she arrived on the 7th December. On the 21st December all the ship's papers were taken possession of by the authorities at Mozambique. On the 23d December they finished discharging the vessel of what she had on board. On arriving at Mozambique all the passengers of the Magoun were sent prisoners on board a Portuguese man-of-war, and the captain and crew were kept in close confinement on board the Magoun; they continued to be so confined until about the last of April, 1848, when all the passengers and crew were transferred to a public prison in Mozambique, where they were kept for a period of many months, where they endured most horrid sufferings, and where many of them died, among others the captain and mate, owing to the barbarities of the Portuguese authorities. After the death of the captain and mate, the vessel was condemned as forfeited to the Portuguese government; against which condemnation and forfeiture, no person whatever had opportunity to interpose any defence, it having been made wholly on *ex parte* statements; it was even asserted at Mozambique that the captain and mate were starved to death, to prevent their testimony being given upon the case. Each portion of the affair, from the seizure of the vessel to the death of the captain, was accompanied with great violence and outrageous abuse of the American people and flag, by the Portuguese authorities concerned in it. Indeed the whole character of the case, as it appears from the testimony, is such as to be beyond belief, were it not that cases of almost equal wantonness and barbarity have heretofore occurred.

The undersigned has given but an imperfect statement of the outrages which are the basis of the claims for indemnification which he has been instructed to make. He will in a short time transmit to your Excellency full proofs of the whole affair, and it is confidently expected that the government of her Majesty will not long hesitate to do justice to the injured parties.

JAMES B. CLAY.

His Excellency CONDE DE TOJAL,

Minister and Secretary of State for Foreign Affairs.

XI.

Count Tojal to Mr. Clay.

DEPARTMENT OF STATE FOR FOREIGN AFFAIRS,

March 18, 1850.

The undersigned, Minister and Secretary of State for Foreign Affairs, has had the honor of receiving the notes which Mr. James Brown Clay, chargé d'affaires of the United States of America, addressed him, respectively, on the 17th of November last and the 23d of February of the present year, with the depositions of the owners and captain of the American brig "Magoun," as well as those of the other individuals designated in the second of the above mentioned notes.

Without losing time, the undersigned transmitted a translation of the first of the notes in question to the minister of the navy, and his excellency

having referred to the decision of the court of justice delivered in Mozambique on the 23d of May, 1848, which was communicated to Mr. George Washington Hopkins on the 26th of February, 1849, and a copy of which is now sent to Mr. Clay, repeats again, that no doubt can possibly be entertained as to the fact of that vessel having been engaged in the illicit traffic of smuggling and the slave trade.

From the contents of the decision above mentioned, it is clearly seen that the brig "Magoun" was discharging her cargo of smuggled goods in a prohibited port on the coast of Mozambique, as that of Angoxe certainly is, which is situated in the centre of the line which runs from the islands of Cape Delgado as far as the bay of Lourenço Marques, which constitutes the boundaries of the Portuguese territory; and although the Sultan Amar Bar Band Macon, a subject of her Majesty, who governed that country *and was in the pay of Portugal*, had rebelled, (for which he has already been partially chastised,) that circumstance does not in any way affect the right and jurisdiction of the Portuguese crown over said territory.

By the treaty of 26th August, 1840, between Portugal and the United States, American vessels are only permitted to enter those ports in her Majesty's dominions where custom-houses are established and where foreign trade is not prohibited; it is evident, therefore, that this infraction of established laws alone, is of itself sufficient to justify the seizure and condemnation of the brig "Magoun."

The fact, moreover, of her not having sailed for Rio Janeiro from a certain and determined port either on the eastern or western coast of Portuguese Africa, shows palpably enough how fraudulent must have been the speculation of the "Magoun." Let us add to this that the brig has yet further incurred the penalty provided for by the decree of the 10th December, 1836, which forbids the traffic of slaves throughout the Portuguese dominions, without any exception whatever, there having been found on board over three hundred mats, a galley-boat, (baiten) and a variety of other objects such as those crafts that are exclusively destined for this trade are generally provided with; this galley-boat (baiten) had actually been constructed on board by carpenters who were brought for that purpose from Angoxe by the passenger Chares, by whose direction the American Captain Russel had come from Rio de Janeiro, as the latter asserted under oath.

It was also shown by the deposition of the pilot and sailors of the "Magoun," that the aforesaid captain had a written order from the proprietor upon Chares for the sum of ten thousand dollars, and for delivering the "Magoun" over to him; and also for landing every American out of the crew in Angoxe as soon as the delivery had been effected, and to wait there for another vessel to take them to Rio de Janeiro; from all this, it is very evident that the aforesaid brig had been purchased by that Portuguese subject for the purpose of shipping slaves and transporting them into Brazil.

On the other side, the Portuguese sailors, who came from Rio de Janeiro in the brig "Magoun," also deposed, that they had been hired to go on board *under the assumed character of passengers*, for the consideration of twenty thousand shillings (reis) and a gratuity of five hundred thousand shillings (reis) whenever they should return from the African coast *with a cargo of slaves*; all the testimony given in the case, therefore, clearly tends to prove that the said Chares was purchasing slaves for the purpose of carrying on the business in which he was engaged; and that he had on board all the necessary implements suited for that occupation, without men-

tioning a machine for converting salt water into sweet water, the cauldrons of which were also used for cooking the victuals of the slaves. In view of the judgment rendered in the premises, therefore, by the proper tribunal, under all the prescribed formalities of the law, and after hearing and examining the lucid evidence which has been produced, no doubt can possibly exist as to the inadmissibility of the claim set up by the owners and captain of the American brig "Magoun;" nor can the undersigned presume for a single moment that the government of the United States, whose fiscal laws are so austere that the least infraction of them is punished with the utmost severity—sometimes even without the semblance of fraud—would condemn the proceedings of the authorities of Mozambique in the case under consideration, without considering that the government of her Majesty, in virtue of the perfect independence of the judicial power, has not power to reverse the decision which condemns the brig in question for having violated both the laws of the country and the fiscal regulations in force. With regard to the proceedings complained of in relation to the case of the brig "Magoun," proper instructions have already been sent by the minister of the navy to the governor general of the province of Mazambique, informing him as to the representations that have been made in the premises, and the undersigned pledges himself that as soon as the bad treatment which Mr. Clay complains of shall have been proved, the culprits will be severely punished. I mean to remark that all that the law imposes in such cases is simple imprisonment.

Finally, as to the indemnification claimed by Mr. Charles Dupuy—a passenger on board the said brig—who was detained in Mozambique, and who asserts to *having bought* his freedom from the authorities of that province, a criminal investigation has already been instituted into the facts alleged, in order that due chastisement may be awarded to the parties accused, in the event of their proving guilty, and that measures may be taken according to the laws of justice concerning the indemnification sued for.

The undersigned avails himself of this opportunity to renew to Mr. James Brown Clay the assurances of his most distinguished consideration.

CONDE DE TOJAL.

Sentence of the court of justice, &c.

Having seen and examined the papers of the American brig Magoun, lately from Rio Janeiro, as well as the writ of process issued by the custom-house authorities against the same vessel, it is shown that on the 5th day of November, in the year 1847, the commander of the English frigate Euridice, cruising on this coast, despatched a long boat to the river Angoxe, where she saw a brig at anchor, but could not make out at first what nation she belonged to. She very soon ascertained, however, that it was an American vessel from the flag which had been hoisted, of which fact having informed the British commander on her return, she was sent a second time to the same spot, on the 7th day of the same month, and then the officer in command of the boat observed that the American captain was greatly alarmed, shouting out all the time that he was an American, and that he wanted them to come and examine the papers of his vessel. This

was followed by another circumstance of two English sailors belonging to the brig begging that they might be taken on board the frigate, and be allowed to follow with the boat, stating that the said brig had an armed galley on board, which had been taken to pieces on the 5th as soon as the long-boat made her unexpected appearance in the river, which caused the captain to suspect that the brig was not engaged in a lawful trade. It is shown that his suspicion was not unfounded, because his excellency, the most excellent governor of this province, then and at that time chief of the national station, having, in pursuance of a communication from the commander of the frigate, sent the brig-of-war "d'João de Castro" with a portion of the crew of the brig-of-war Tayo; the commanding officer of the d'João de Castro ascertained from the American captain himself and his crew, that they had landed large quantities of smuggled goods, war implements and powder, and that they had also on board more than three hundred mats or bunks, (eteiras) which were actually seen and captured on the occasion of the visit. It is shown that upon the American vessel Magoun being brought to this port, the custom-house officers found, on inspecting her, one of the identical galley boats generally used by slaves, besides two fugitive slaves, and other objects which are enumerated in the writ of process mentioned. It is shown from the depositions of the first and second pilots of the said American brig, as well as from the testimony of the sailors, that a galley-boat (baileo) had in fact been constructed on board the same brig by carpenters who had been hired in Angoxe by the passenger Chares, in compliance with whose directions the captain had come from Rio Janeiro, as he himself stated upon oath when questioned on the subject by the custom-house officers. It is shown further, from the declarations of the Americans themselves, that the captain had a written order from the proprietor upon Chares for the sum of ten thousand dollars, and for the delivery of the vessel into his hands; this order, which was read by the captain in the presence of the first pilot, also provided that as soon as the delivery had been effected in due form, that portion of the crew that belonged to the American nation should be landed at Angoxe, there to wait for the arrival of another vessel which was to take them to Rio Janeiro; all of which clearly and satisfactorily proves that the vessel being intended for the importation of a freight of slaves, it was not desired that the Americans should participate in the venture. It is shown from the depositions of the Portuguese sailors, that they were hired in the store of Manuel Pinto de Fonseca by his clerk, and in the presence of the former (with the understanding that they should come on board in the character of simple passengers) at the rate of twenty thousand shillings (reis) per month, and a gratuity of five hundred thousand shillings (reis) whenever the said American vessel, in which they were to work as sailors, should reach Brazil with a cargo of slaves from the coast of Africa. It is shown, moreover, by the contents of the passport of said vessel, that she sailed from Rio Janeiro with fraudulent intentions, inasmuch as no mention is made in it of any port or ports of entry, for which she might be bound, as it is customary with vessels engaged in lawful enterprises.

It is shown finally, by the uniform character of the testimony which has been produced, that Chares was in the habit of purchasing slaves for the market, and that he had all the requisites for conveying and exporting the slaves which he bought, even including a machine for distilling salt water and converting it into sweet water, whose large cauldrons were also used

for cooking the victuals of slaves, which had been imported for that purpose, and which had even been tried on board a pangaio, (an Asiatic boat,) and a place fixed upon in the vessel where it was to be located. In view of all these facts, there being not the slightest doubt but that the vessel was employed in the traffic of slaves, and having overwhelming proofs of the actual commission of the crime in the pursuit of which he was successfully engaged, therefore, and agreeably to the provisions of the law in all such cases, the decision of the court is, that the vessel has incurred the penalty specified in the decree of the 11th September, 1836, the commission of the crime having clearly been proved; and we pronounce the prize taken on the eastern coast of Africa a good and lawful prize in all the effects properly pertaining to it.

CELESTINO FELEREANO DE MENEYER.

DOMINGOS FORTUNADO DE VALLE,

President.

THEODORICO JOSE D'ABEANCHES.

FRANCISCO XAVIER FERRIERA.

C. M. MONTES.

MANUEL ANTONIA DA FONSECA.

PLACIDO PROIRY VUNERY.

MOZAMBIQUE, *May 23, 1848.*

According to law:

CEGARIO S. MALTHER,

Minister of the Navy and the Colonies.

February 15, 1849.

According to law:

MANUEL JORGE D'OLIVEIRA LIMA,

Secretary of State for Foreign Affairs.

March 18, 1850.

By order of the principal counsellor of state ad interim:

JACINTO DA SILVA MENGÓ.

XII.

Mr. Clay to Count Tojal.

LEGATION OF THE UNITED STATES,

Lisbon, April 30, 1850.

The undersigned, chargé d'affaires of the United States of America, has already had the honor to acknowledge the receipt of the note of his Excellency the Conde de Tojal, of the 18th ultimo, informing him of the rejection by her Majesty's government of the claims for indemnification of the owners of the American brig Magoun, and of the subsequent notes transmitting to him copies of laws of Portugal in reference to that case. He desired before making a reply to said note fully to understand the ground upon which the claims are rejected, and he now has the honor to state to his Excellency his views of the case, and his objections to the argument made.

The brig *Magoun*, whilst lying quietly in the river *Angoxe*, on the east coast of Africa, waiting for a wind to sail on her voyage, was, in the month of November, 1847, forcibly taken possession of by a Portuguese ship-of-war, forming part of a force on its way to attack the town of *Angoxe*, which was situated some distance above where the *Magoun* lay on the said river, and which was then in possession of a Moorish sultan who claimed to hold independently of Portugal, and whom the said force was sent to reduce to subjection or to conquer. The *Magoun* was sent in charge of a prize crew to *Mozambique*, where her crew and passengers were thrown into prison, and she dismantled. Her crew and passengers remained about eleven months in prison, where her captain and first mate died, as is believed from starvation, and not until after their death, a period of many months having elapsed since the seizure, did the Portuguese authorities proceed to condemn and confiscate the brig, which was done without notice to any one interested in her, and without any one being allowed to appear in her defence. These facts the undersigned does not understand to be denied. The evidence, however, of the reckless, wanton and illegal manner in which the brig was seized and confiscated, and her people thrown into prison, which the undersigned had the honor to transmit to his Excellency on the 23d February last, have been passed wholly without notice.

In his said note of the 18th ultimo, his excellency bases the rejection of the claims altogether upon the judgment of the junta de justicia of *Mozambique*, of the 23d day of March, 1848, which asserts two grounds for the seizure and confiscation of the brig and the treatment of her people, the principal of which is the charge that she was engaged in the slave-trade, and the other, which seems to be only collateral, as it is scarcely mentioned in the said judgment, appears to the undersigned only to have been thrown to make weight, is that she had landed her cargo of contraband goods in the prohibited port of *Angoxa*. The undersigned will first dispose of this collateral ground before he comes to the principal one, the charge that the brig was engaged in the slave-trade. It does not appear that at the time of the seizure of the brig, when the wrong originated, it was at all known that she had landed any goods whatever at *Angoxa*, nor was that given as the pretext for her seizure at the time it was made; but admitting that she did land goods there, the captain states that he did not know it to be a Portuguese possession, that it was actually in the possession of the Moors, who did not acknowledge subjection to Portugal, and that the latter had never had any resident there. Now when the wild state of the coast of Africa is considered, vast domains nominally belonging to European powers, separated by imaginary lines; it does not seem strange that the captain should have been ignorant that *Angoxa* was claimed by Portugal, or that he should have believed that it belonged to the Moorish sultan, who was in actual possession. This question of title the undersigned does not intend to discuss; but even supposing the right of Portugal to be beyond controversy, it does appear harsh and horrible that the ship of a friendly nation, for landing goods in such a place and under such circumstances, should be seized and confiscated, and her people subjected to imprisonment and death, whatever may have been the prohibitory laws respecting her ultra-marine possessions. But had she any laws in vigor which would authorize these cruelties? The undersigned called upon his excellency for them, and he now confidently asserts that none have been furnished which would in any way authorize them. The decrees of the 5th of June, 1844, and of the 23d of July, 1847, which his excellency transmitted are simply prohibitory; they furnish no sanction, or

in other words fix no penalty for their infraction; they clearly give no authority for those violent proceedings, that must have been evident to the government of her Majesty when it called upon the port warden general to search the archives for antecedent laws. In the opinion which it also furnished, it appears that after diligent search in the repository of the most ancient archives of the kingdom, that officer found several laws upon the subject some hundreds of years old; and after mentioning all, he gives it as his opinion that the law of 1711 is still in vigor, except in some specific cases; but even that law as set forth in answer to the demand of the undersigned in the said opinion, does not give such penalty as has been enforced against the Magoun; it furnishes some penalties against government officials who permit the illicit trade, but as to the foreign ships, it merely states that they shall not go to the prohibited ports, unless compelled by stress of weather or want of provisions, and that when their necessities have been supplied they shall be ordered off. These are all the laws furnished bearing upon the point of the case, and clearly they furnish no justification. The law of nations favors commerce, and when it is attempted to justify the seizure and confiscation of the property of citizens of a foreign State under the local laws of another, those laws as well as the facts of the case ought to be very clear in every part. As in this case no law is shown, the undersigned considers the first ground assumed, to be wholly inadmissible.

His Excellency and the Junta of Mozambique both seem to consider that the Portuguese authorities have the right to seize and condemn any vessel merely because she is engaged in the slave-trade! It certainly is not so as to American vessels; no nation has a right to seize and condemn them, if they be taken on the high seas, although brim full of slaves from deck to keelson, save their own. The general law of nations does not condemn the slave-trade, and no nation to whom she has not given the right can enforce the particular laws of the United States on the subject; she has given that right to none. If Portugal has entered into treaties with other nations upon the subject of the slave-trade, certainly those treaties ought to be observed; and if she has laws against it in her own territories, undoubtedly she has the right to enforce them against the vessels of any nation which in her territory infringes them; but even then in her conduct towards the ships of foreign nations, she must be governed by those laws. Now what is the law of Portugal which prohibits the slave-trade in her dominions? It is the decree of the 10th December, 1836, which has been furnished to the undersigned. This law seems intended solely for Portuguese ships, or those fitted out in her territories, and no where touches the case of a vessel not fitted out in Portuguese territory, except perhaps in its first and second articles, which simply prohibit the exportation or importation of slaves from or into the dominions of Portugal; all the other articles down to the seventh regulate the mode in which the exceptions to the first and second articles are to be conducted; number seven refers expressly to Portuguese vessels or those of foreign nations, fitted out in her ports, neither of which the Magoun was, and all the subsequent articles regulate the commerce of, and proceedings against such vessels, or the course to be pursued against officials guilty of the breach of their regulations; and the greatest penalties any where imposed by the law against such ships, that is Portuguese ships, or vessels fitted out in Portuguese ports engaged in such illicit trade, is the loss of the slaves or their value, a fine equal to half the value of the vessel, and three years in the galleys; these are the extreme penalties of

the law, and it expressly states, that in such case the punishments are to be regulated by the circumstances of the case. This law cannot justify the proceedings against the Magoun even had she been taken in the act of carrying on the slave-trade in the Portuguese dominions. But was she engaged at the time of her seizure in that trade? This is expressly negatived by the contract set forth in the said judgment of the Junta of Mozambique, which although not admitted by the undersigned, cannot be denied by her Majesty's government which has set it up and asserted it. The judgment asserts that the Magoun was contracted to be sold and delivered to a man by the name of Chares, a notorious slave dealer, for the sum of \$10,000 (*der mil pesor*) which the captain was to receive, and to deliver the brig, and as soon as she was delivered, to land his American crew expressly for the purpose *that they should not be engaged in the slave-trade*; it is not shown that the money was received, and the brig certainly was not delivered, and it is clear from the very contract as asserted, that her American owner did not intend to engage her himself in that trade; so that neither under the law, nor the facts, as asserted by the said judgment, had there been law shown, could the Magoun be condemned as being engaged in the slave-trade in the territories of Portugal. It was simply the case of a vessel seized on suspicion, and afterwards sought to be justified by laws which did not bear at all upon the case.

These are the views which the undersigned entertains, which he submits with all respect, and which he hopes may have the effect to change the determination of her Majesty's government.

He renews to his Excellency, upon this occasion, assurances of the distinguished consideration with which he has the honor to remain, his most obedient servant,

JAMES B. CLAY.

To his Excellency CONDE DE TOJAL,

Minister and Secretary of State for Foreign Affairs.

XIII.

[Translation.]

Count Tojal to Mr. Clay.

DEPARTMENT OF STATE FOR FOREIGN AFFAIRS,

June 18, 1850.

The undersigned, Minister and Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the note which Mr. J. B. Clay, chargé d'affaires of the United States of America, addressed to him on the 20th April last, in answer to his communication of the 18th of same month, on the subject of the American brig Magoun.

Mr. Clay now presents some considerations to show that the condemnation of that vessel by the Junta of Justice of Mozambique, decreed on the 23d May, 1848, is not justifiable, because, while the brig Magoun was quietly at anchor in the river Angoxe, in the province of Mozambique, *awaiting a fair wind to proceed on her voyage*, she was captured in November, 1847, by a Portuguese man-of-war, one of the vessels forming

the expedition on its way to attack the tower of Angoxe, situated in the interior of the place where the brig Magoun was lying, and which was then in possession of a Moorish chief, or *Sultan*, with which title Mr. Clay distinguishes him, and who pretended to hold that territory independent of Portugal, and against whom the force was sent to reduce him to subjection; that the said brig Magoun was sent to Mozambique and its crew and passengers to prison, where they laid eleven months, the master and mate therein dying, as Mr. Clay presumes, from hunger, and that *subsequently to their death, and many months after the seizure of said vessel*, the Portuguese authorities proceeded to condemn and confiscate it, without having previously notified the parties therein interested, or permitted any one to appear in their defence; that the fact of the said brig Magoun having been arbitrarily and unusually confiscated, and its crew cruelly treated, had not been refuted in the undersigned's preceding note. In the first place, the undersigned in reply will take the liberty to offer to the consideration of Mr. Clay, that the Magoun having been taken in the river Angoxe, in November, 1847, and sentenced by the tribunal at Mozambique on the 23d May, 1848, only six months intervened between the two facts; it cannot be with justice or reason alleged that there was an interval of many months between the seizure of the said brig and its condemnation. And now from the tenor of the decree it is clear and evident, both from the testimony of the Americans and of the Portuguese, who came from Rio de Janerio, already contracted to take the brig back with a cargo of slaves, which was to have been shipped, fully justified the condemnation by their depositions; for the former as well as the latter declared, under oath, that the said brig had unladen at Rio d'Angoxe a cargo of goods for that unlawful trade, and that *they there only awaited the arrival of the slaves from the interior*, in order to sail with them to some port in Brazil.

In virtue of the treaty between Portugal and the United States of America, of the 26th August, 1840, Portugal granted to the United States, *prior to any other nation*, the permission to trade with its African possessions, and the decree of 5th June, 1844, positively designated the ports of the western and eastern coast of Africa, where alone it was permitted to enter, both in respect to Portuguese vessels as well as to those belonging to the nations to which Portugal had explicitly allowed that favor. How can it then be expected that greater concessions should be made to the trade of foreign nations than is granted to the national flag? Besides, the said decree was caused to be integrally published in American journals by her Majesty's legation, so soon as it was promulgated, many years before the arrival of the brig Magoun at Angoxe; ignorance cannot therefore be alleged of this law, which rigorously prohibited to all and every foreign vessel to frequent places of that coast, with the only exception of the port of Mozambique.

It is consequently obvious that the owners themselves, or such as were interested in the Magoun's voyage, could not but have had a knowledge of the provisions of that decree, and that in spite of these provisions they had not the least scruple to involve the American flag to a certain extent in the speculation, the better to insure its result. And this is the reason why the Magoun was not chartered, but actually sold for ten thousand dollars to the Portuguese Chares and his associates, thus to undertake, with the more certain hope of the safe issue of a speculation of as much risk and contingency as it is illegal. It is evidently proved by the depositions of the wit-

nesses, that the said sum of ten thousand dollars was to be paid to the American captain, or to the supercargo at Angoxe, or at Mozambique, so soon as the slaves should have been shipped, and then to lower the American flag. This payment was thus agreed upon to be made on account of the conveniency that would result therefrom, not alone to Chares and his companions, but also to the owners of the Magoun, with the intention, no doubt, of investing that sum on the coast of Mozambique, in the purchase of ivory or any other goods, to be shipped on board the expected American vessel, as declared in the depositions of the witnesses, to take them and their said goods to some port of the United States, or of any other country. It cannot therefore be admitted for one moment that the owners of the brig Magoun, at Rio de Janeiro, would have subjected themselves to run the risk of so precarious, perilous, and illegal a voyage to the eastern coast of Africa, (even omitting the port of destination on that coast, which well proves the consciousness of the fraud,) without having exacted either the deposit of the sum or very good security at Rio de Janeiro, even to guard against the seizure of the vessel, which was certainly much to be apprehended. Under all these circumstances, how could the right and justice of the brig Magoun's condemnation be denied, for the fact of defrauding the revenue by the smuggling on shore at Rio d'Angoxe merchandise unlawfully taken there, and which could only be landed at Mozambique, the only point on that coast in which it is permitted to enter and trade? In respect to Mr. Clay's assertion that the river Angoxe was then under the dominion of a *Moorish sultan*, who had proclaimed his independence of Portugal, and that it could not therefore be considered Portuguese territory, the undersigned begs leave to say, that this transitory and fortuitous circumstance cannot for an instant render the unquestionable right of the Portuguese crown doubtful over that part of the coast, and that the river Angoxe being only a few miles to the south of the capital of the province of Mozambique, the limits of which are so well known, (it being needless to describe them here, as they are found upon every map,) it is clear that such an argument cannot tend to absolve the parties interested in the Magoun from the penalty they incurred, and of which they were certainly not ignorant when they undertook that speculation. Besides, that chief was so far from being an independent potentate that he was actually a *Portuguese authority*, receiving salary from the crown of Portugal by a regular appropriation in the budget; and however it was the case that he had momentarily rebelled, as often has been done by rajahs in British Hindostan, and even lately in Hungary against the house of Austria, nevertheless, international law does not recognize them independent so long as they are not so acknowledged by the State to which they belonged. And Mr. Clay, admitting as he does that the Portuguese vessels-of-war which seized the brig Magoun were part of the naval force on its way thither to reduce the said chief to obedience, he admits *ipso facto* that the territory appertains to the Portuguese crown.

With reference to the terms "arbitrary" and "unjustifiable," which Mr. Clay applies to the seizure and condemnation of the brig Magoun, the undersigned will repeat what he has already said in a former note, that all legal forms were observed in that suit, wherein the testimony of different nations was unanimous, and evidently proved a glaring infraction of the fiscal laws.

The undersigned therefore trusts that neither Mr. Clay nor the government of the United States will deny the right which the Portuguese nation

has, in common with all other nations, to zealously seek for and watch over its public revenue and the observance of its laws, very especially in so extensive a coast as the one in question, and against unlawful speculations, however they be undertaken, whether by its own subjects or under the flag of any other nation.

In relation to the imprisonment of the captain and mate, the undersigned has already stated, in a former note, that such commitment is a comminution of the law for like cases; and so truly is this the fact, that under the administration of the Marquis of Pombal, some French subjects had been imprisoned for smuggling in the Portuguese possessions in Africa. This gave occasion to a long correspondence between the Portuguese government and that of Louis XV., and it became necessary for the French ambassador at this court to request, in the name of the king, his master, and *as a favor*, the release of the prisoners, thereby acknowledging the laws in virtue of which they had been committed.

The undersigned doubts that the captain and mate of the brig Magoun should have died literally of hunger in the Mozambique jail, as Mr. Clay advances, for this would not be in conformity with the sentiments of humanity, and the Portuguese national character, and of its authorities; it being more probable they were the victims of the Mozambique climate, in general so fatal to foreigners. However, on this subject the undersigned has already had the honor to assure Mr. Clay that the minister of the Marine and Ultra-marine Department has ordered the most scrupulous investigations, in order to severely punish any abuse or arbitrary act which may perchance have been committed.

Notwithstanding what has already been stated, the undersigned has thought fit to offer these considerations with all impartiality, frankness and deference to Mr. Clay, upon the case in question, repeating at the same time the proposal already made to him, to refer this, as well as all other pending claims, to the decision of a third power, chosen by both governments.

The undersigned avails himself of this occasion to renew to Mr. J. B. Clay the protests of his most distinguished consideration.

CONDE DE TOJAL.

XIV.

Mr. Clay to Count Tojal.

LEGATION OF THE UNITED STATES,
Lisbon, June 19, 1850.

The undersigned, chargé d'affaires of the United States of America, has the honor to acknowledge the receipt of the note of the 18th instant, addressed to him by his Excellency the Conde de Tojal, in reply to his note of the 30th of April, respecting the claim of the owners, &c., of the American brig Magoun.

His excellency in his said note seems to consider that the undersigned had brought in question or denied the right of Portugal to that portion of the territory on the coast of Africa, including the river Angoxa. The undersigned in his note of the 30th of April, expressly disclaimed any

intention to discuss that question, and merely observed that under the circumstances it was not surprising that the fact of its being Portuguese territory was unknown to the captain of the Magoun.

Neither did the undersigned, in his said note, question the right of Portugal to make laws for the government of her own territory and to enforce them when made; on the contrary he expressly noticed that right.

The case he meant to present, and which he thinks he did present clearly, was that a vessel of a citizen of the United States was seized and confiscated, and her crew and passengers thrown into prison by the Portuguese authorities; the United States had a right to inquire, and as her representative the undersigned did inquire the grounds upon which these acts were done. His excellency asserted that they were done under the authority of certain particular laws of Portugal, which, when called for, were furnished to the undersigned by his excellency. In his note of the 30th of April, it was the purpose of the undersigned to show that those laws did not furnish the authority which they were asserted to afford, or justify the acts complained of.

His excellency not having pretended in his said note of the 18th instant, to answer the arguments advanced by the undersigned, he is bound still to consider that the Magoun was unjustly and unlawfully seized and confiscated; that the death of her captain and mate and the hardships inflicted upon the rest of her crew and passengers were in consequence of that illegal seizure; and that the government of her Majesty justly owes indemnification upon the claims.

As to the proposition which his excellency renews to refer all the claims to an arbiter, the undersigned can only repeat what he has already had the honor to say, that he has no instructions from his government which authorize him to accede to it.

The undersigned renews to his excellency assurances of the distinguished consideration with which he has the honor to remain his most obedient servant,

JAMES B. CLAY.

To his Excellency the CONDE DE TOJAL,

Minister and Secretary of State for Foreign Affairs, &c., &c.

XV.

G. W. Hopkins to Visconde de Castro.

LEGATION OF THE UNITED STATES,

Lisbon, March 10, 1849.

SIR: In obedience to instructions which I have received from the government of the United States, I have the honor to lay before your Excellency the claim of the owners, underwriters and master of the American schooner "Colonel Blum" against the Portuguese government, for losses occasioned by the alleged illegal seizure and subsequent destruction of that schooner, at the Island of Sal, by the local authorities of her most faithful Majesty's government.

From information which I have received, it appears that this schooner sailed from New York on the 4th of July, 1848, bound for Rio de Janeiro,

with a cargo of coals, lumber, hay, &c. She encountered head winds and calms, and consequently had a long voyage, which, in addition to the loss of water from the accidental bursting of the hoops of several water casks, the schooner was forced to put into the Island of Sal in distress, being left with a small quantity of water, and that unfit for use. The schooner stopped in Mordina bay. On the same evening the mate of the vessel made an ineffectual effort to communicate with the island by means of a small boat, and on the next morning he was sent on shore to procure relief. This was refused, and he was peremptorily told that the schooner must come into the port of St. Mary to obtain water. He protested in vain, both the suffering of the crew and the adverse winds and current, which for hours had baffled all the efforts of the master and crew to bring her into the port of St. Mary. On the next day the harbor master boarded the schooner with armed men and informed the master that the vessel should have no water until she was brought into the port of St. Mary, and that unless this was done a fine of 576\$000 rais would be imposed upon her, notwithstanding the wind was still against her. The captain then went on shore with the harbor master, under the hope of being able to communicate with the American vice-consul, but was disappointed. He exhibited his ship's papers, and earnestly implored relief, upon the grounds of both justice and of humanity, but in vain; for instead of the relief to which he was justly entitled, his ship's papers were seized by armed soldiers. Under these circumstances the captain went before the Brazilian vice-consul, in the absence of any American consular agent, and made his protest in due form of law, which was duly authenticated and is now in my possession.

Subsequently the master of the port, who had already, as stated, taken forcible possession of the schooner, attempted to force her into the port of St. Mary against all the admonitions and remonstrances of the master of the schooner, and the consequence was the entire loss of the schooner, her cargo, and of everything belonging to the vessel. Having thus ignorantly brought on this calamity, or flagitiously committed this high-handed outrage, the harbor master seized upon the only small boat at hand belonging to the schooner, to effect the escape of himself and his own men, and left the American sailors on the sinking wreck, all of whom must in all probability have perished but for the timely aid generously sent to them by a German master, who was an eye-witness of the scene and whose testimony has been obtained.

I forbear any further comments at present upon this extraordinary case. The proximity of the island where this outrage is alleged to have been committed, and the facilities of frequent communication with it, will preclude the necessity for much delay in ascertaining the truth of the facts stated by the parties aggrieved. I feel warranted, therefore, in saying, under the peculiar circumstances of this case, that the government of the United States will expect the claim to be brought to an early determination.

In addition to the several specific items which compose the greater part of this claim, and which amount to the sum of nine thousand five hundred and eighty dollars and fifty-one cents, with interest from the day of the seizure of the schooner, the government of the United States will insist upon ample reparation for all the consequences resulting from acts so flagrantly unjust and inhuman, as those reported to have been committed by the Portuguese authorities upon the "Col. Blum."

In suggesting to your excellency the high importance of adopting imme-

diate and suitable measures to prevent a recurrence of acts so inconsistent with the spirit of the age, and so palpably violative of the just rights of the government and citizens of the United States; and in the candid declaration which I feel called upon to make, that a repetition of them cannot fail to jeopard the friendly relations which have so long and so happily existed between the two countries, I trust the admonition will be received in the same kind spirit, personal and official, in which it has been made.

I avail myself of the occasion to renew to your excellency, assurance of the distinguished consideration and esteem with which I have the honor to be, with great respect, your obedient servant,

GEO. W. HOPKINS.

VISCONDE DE CASTRO,

Minister of Foreign Affairs, &c., &c., &c.

XVI.

Count Tojal to Mr. Clay.

DEPARTMENT OF STATE FOR FOREIGN AFFAIRS,

May 28, 1850.

The undersigned, Minister and Secretary of State for Foreign Affairs, has the honor to acknowledge the receipt of the note of Mr. Hopkins, addressed to his predecessor, under date of 23d of March, 1849, as well as Mr. James B. Clay's, Chargé d'Affaires of the United States of America, communication of the 17th of November last, in respect to the claim of the owners, underwriters, master and mate of the American schooner Colonel Blum, seized by the fiscal authorities of the Isle of Sal, of the Archipelago of Cape Verd, in September, 1848, in the total amount of \$10,180 51, viz:

Amount of invoice-----	\$1,042 76
Value of the vessel-----	5,749 50
Freight from New York to Rio de Janeiro and back to New York-----	3,144 33
Probable profit on cargo-----	156 42
Notarial expenses-----	37 50
Taking the documents to Washington-----	50 00

Mr. Clay says that the documents presented with his note are so clear, complete and unquestionable that it would be idle to add any argument to confirm the justice of the claim. On this subject the undersigned begs leave to observe to Mr. Clay, that the protest of the master of the said vessel, J. W. Tate, shows that he himself gave rise to the proceeding of which he complains, it being beyond question that in any other foreign port, where in the same manner he had violated the fiscal laws, to which all vessels, both foreign and national, are and ought inflexibly to be subjected, he would have incurred in the same penalty, namely, the seizing of his vessel.

From the testimony of the said master, it appears he sailed from New York in the said schooner Colonel Blum, with the insignificant cargo of planks, hay and coal for the port of Rio de Janeiro, amounting to the small

sum of \$1,042 76 ; that the hoops of six hogsheads of water having burst, as he alleges in the first month of his voyage, losing thereby all the contents, he was under the necessity to seek the Isle of Sal, one of the Cape de Verds, on the 8th of September, anchoring in the Bay of Mordevia of the same island, with the only object of obtaining water. It further appears, however, that the said master, as he himself avowed, had already made three voyages to the Isle of Sal, for he says, "I felt well acquainted at the Island of Sal;" he could not, therefore, but know that it was unlawful to anchor in that port, which could only be done in that of Santa Maria, which is the chief town, hardly nine miles distance, where the custom-house is established, and where communication with land alone is permitted, not merely in respect to foreign, *but also to national vessels*; the said master asserts having sent the mate on shore in a boat the next day, the 7th of September, to obtain water, but that he was immediately notified by some soldiers that he could not have permission to obtain water at that spot; and he further declared that at 10 o'clock that same morning of the 7th, he was boarded by a boat from port Santa Maria, sent by his correspondents, Martins & Co., to inquire if the vessel required water, as in his preceding voyages he had always been consigned to them. This circumstance fully corroborates that which the undersigned has stated, that the said master being in the habit of frequenting the said island, and having there regular correspondents, he cannot allege his ignorance of the fiscal laws of the place, nor, consequently, that it was absolutely prohibited by the said laws to supply himself with water on the said spot, nor at any other place on the said island, except at Santa Maria, where the custom-house was located.

The master pretends to excuse himself for not having gone to Santa Maria on account of contrary wind, and because he had no more than half a pipe of water on board. By the survey which was had, with all formality on board, it was found, however, that besides the half pipe of water another full pipe or large cask (tonel) was found hidden away in the hole, a fact which constitutes an evident proof that it was not for want of water that the schooner Colonel Blum, under his command, could not sail the short distance of nine miles, which was the little distance as has before been said; it had to run from the bay of Mordevia to the port of Santa Maria, which gives rise to well-founded suspicions or presumptions that Captain Tate had some clandestine speculation in view, when, with manifest infraction of the laws, he well knew he cast anchor in the aforesaid bay of Mordevia. It is worthy of remark that Captain Tate having, landed he refused returning to his vessel, abandoning it thus on purpose and without justifiable cause, which he ought not to have permitted himself to do. In consequence of this desertion on his part, it became necessary that the captain of the port, the only competent authority, should take charge of the vessel and take her from the bay of Mordevia to port Santa Maria, in which port alone it was permitted for her to come to an anchor. It happened that in sailing from that bay to the said port the schooner Colonel Blum was lost—a loss which can only be attributed to the defects of that vessel, which had bad properties and would not ware or go about (*virar por d'avante*) as was deposed by three of the crew, and not to the incapacity of the captain of the port, as was proved by the legal investigations had upon all the circumstances of the case. This calamity can, therefore, only be charged upon Captain Tate, who abandoned his vessel without cause, as

was proved, leaving no other alternative to the fiscal authorities, upon whom rested all the responsibility for the execution of the law, than to order the vessel to be taken by the captain of the port to Santa Maria, the only permitted place of anchorage. The pretext of not having sufficient water on board to go to the port of Santa Maria, hardly nine miles distant from Mordevia, cannot be admitted, for there was yet a pipe or large cask of water and another half full, a quantity sufficient to supply the crew for at least twenty days. Besides, after the master was intimated to leave for Santa Maria he remained on shore two days, when the custom-house was compelled to take charge of the vessel; all of which is evident from the enclosed copy of the communication of the respective governor-general.

In view, then, of all these circumstances, which evidently prove the irregular conduct of Captain Tate, with what justice can the fiscal authorities of the Isle of Sal be accused of having proceeded illegally or arbitrarily in respect to the schooner Colonel Blum. Was not the master the only guilty party, who thus and on purpose provoked all the consequences which followed? What else could the authorities have done but to comply with that which the law positively determined for such cases? Has not the government of Portugal, perchance, as well as all other governments the right to enforce its fiscal laws? In what other country are such laws more rigorously executed than in the United States of America, where the slightest infraction is followed by the seizure of the goods and the vessel itself, without even the least possible favor being obtainable from the superior authorities, who always refuse upon the ground of the inflexibility of the fiscal laws. The conduct of the Portuguese authorities, therefore, in the cases in question, can in no wise be taxed as unjust and arbitrary, because they did no more than execute the laws. And the undersigned will observe to Mr. Clay that were even the Portuguese government responsible for the loss of the vessel, the cargo and freight, to Rio de Janeiro, it could never be obliged to indemnify an *imaginary* freight of twenty-seven hundred and seventy-five bags of coffee from Rio de Janeiro to the United States at seventy-five cents per bag, and fifty-seven cents primage in the sum of \$2,185.31, as this freight was extremely contingent and doubtful in consequence of the quality of the vessel; there being no ground, therefore, upon which to claim it. In respect to the value of the schooner, which its owners estimate to be worth \$5,749.50, the undersigned will also take the liberty to observe to Mr. Clay, that it was an old vessel with very bad properties, and it is well known that in the United States of America are rarely worth more than three to five thousand dollars.

The undersigned begs to be excused for having delayed for so long a period to answer Mr. Clay's note in respect to this claim. He had, however, hoped to have received from the Navy and Ultra-marine Department a copy of the judicial condemnation of the schooner "Colonel Blum," and notwithstanding it has not yet been transmitted from Villa da Praia, of the island of Santiago, the seat of the judicial tribunal of the Archipelago of Cape Verd, the undersigned would not delay to present to Mr. Clay these considerations, in the well-founded hope that he would undoubtedly acknowledge that on the part of the Portuguese government, and of its authorities in the island of Sal, nothing of an arbitrary nature was done in respect to the schooner "Colonel Blum." But, notwithstanding the conviction of her Majesty's government that there is not the least cause to claim from it

an indemnification for the case in question, desirous still of giving another proof of its good faith and its warmest wishes to foster and maintain the most perfect harmony with the government of the United States, it is willing to refer to an arbitrator of mutual choice, not only the decision of this affair, but also that of all pending claims without exception.

Her Majesty's government therefore proposes to Mr. J. B. Clay this mode as the most impartial and adequate, in order to terminate these claims at once, and trusts that this proposal will merit the prompt consent of his government, who undoubtedly is animated with the most friendly feelings towards the Portuguese nation as her Majesty's government bears towards the United States, with which it has preserved without interruption the closest relations of friendship.

The undersigned renews on this occasion to Mr. J. B. Clay the protests of his most distinguished consideration.

CONDE DE TOJAL.

Governor Generalship of the Province of Cape Verd, No. 1410.

HEADQUARTERS OF THE GOVERNMENT OF THE PROVINCE,
Villa da Praia, May 4, 1849.

MOST ILLUSTRIOUS AND MOST EXCELLENT SIR: In harmony with the provision of the superior order (portario) No. 1790, transmitted from the department under the charge of your excellency on the 25th of March last, covering the copy of the despatch forwarded to the Department of Foreign Affairs by her most faithful Majesty's minister in the United States of America, in relation to the claim which the master of the schooner Colonel Blum pretends to make, which schooner was considered by the custom-house of the island of Sal as having incurred the penalty mentioned in articles third, fourth and seventh of the superior order No. 1235, was transmitted from the department through the channel of this governor-generalship, on the 9th January, 1846, a claim which it is proposed to make in consequence of the said schooner having run aground when being taken from the prohibited port, where it was found, to that where the custom-house is established, it behooves me to have the honor to lay before your excellency the following circumstantial statement of what in reality took place in respect to that vessel.

On the 6th of September, last year, the custom-house of the isle of Sal was informed that there was an unknown vessel at anchor in the Bay of Mordevia, (commonly called Rabo de Junco.) As that is one of the prohibited points of this governor-generalship, even to the coasting trade, according to the third article of the aforesaid superior order, because there is there no fiscal delegation, the said custom-house immediately took the required steps in order to ascertain what could be the cause for such a transgression of the fiscal laws, and sent without loss of time to that place the competent officer (merrinho,) to make the necessary investigation, and notify the master of the vessel that he should immediately set sail from thence to port Santa Maria, (or Madama,) as it was not allowed to come to an anchor in that where he was. The result of this step is to be seen in the inclosure No. 1, from which will be perceived that the master gave

as an excuse for coming there the want of water, insisting on that account on remaining at anchor.

So soon as this was known to the custom-house, on the following day another officer was sent, accompanied by the chief inspector (patrão mór) and others, in order to make a survey on board, to ascertain if this circumstance could have been caused by the impossibility of going without danger to the port indicated to him, this being the only motive by which he could be allowed to remain there, as the captain was on shore, the above party going to Rabo de Junco, met him there; the inspector inquired what motive he could have for not sailing to where he was intimated twenty-four hours before, and the answer of the master was, that the absolute want of water forced him to anchor and remain in that port; in consequence of this declaration, the said officer required, without violence and obtained without resistance, the vessel's papers, and then told the master that he was going on board to ascertain if water was truly wanting on board; notwithstanding this, the said master remained on shore, the survey having been made, as stated in the certificate (auto) of which I served your Excellency a copy under No. 2; from it, it will be perceived that there was on board sufficient water for the vessel to proceed to Santa Maria, a sail which at the utmost could not occupy over twelve or sixteen hours, from which circumstance it was evident that the arrival and stay there of the Colonel Blum had been a voluntary act, which became very suspicious, as in addition to the resistance of leaving the port, notwithstanding the notification to that effect, he had cargo on board which had not paid the duties of consumption in the province, which compelled proceedings according to Art. 4th, of the above mentioned superior order; it was therefore with sufficient cause that the custom-house restrained the Colonel Blum, as per enclosed copy No. 3, of the respective proceedings (auto.) As it was impossible, however, without more provisions and water for the vessel to proceed, as it was necessary, to Villa da Praia, where the judge was, and he being the competent authority to determine the penalty the Colonel Blum had incurred, besides that of \$76,000 which the custom-house had imposed, nor was it proper to leave the vessel at that point, not only because its permanency there might lead other vessels to think they could come to an anchor in the said port, but also because the custom-house officers could not be spared in that case to be in attendance, as the performance of their duty required; for all these weighty reasons the custom-house determined to have the vessel sent to port Santa Maria or Madama, to receive the objects it might require to sail thence, for Villa da Praia, charging the said patrão mór, as the only competent person, with this duty. Unfortunately at the entrance of the said port Santa Maria, the vessel ran ashore on the point of Senó and was lost, notwithstanding the assistance sent from on shore; and however it be pretended that this misfortune occurred on account of the neglect of the said patrão mór, more than one reason makes me believe that such an imputation is unjust, and very specially on noticing the declaration of the captain himself, when he says, "that the schooner did not answer her helm when going about, at which he was surprised; and that when the stern anchor was let go, by order of the captain of the port, the cable snapped and the anchor was lost." When I combine this declaration with the testimony of the witnesses, with the notable circumstance of the captain being on shore on that occasion, as will better be seen by the testimony (justificação) which accompanies this, No. 4. I cannot believe

that the captain was unacquainted with what the whole crew knew, that is, the very bad qualities of the vessel; and if this be so, it would appear that the said captain little cared if his vessel went on shore, for otherwise he would not have abandoned it, as he did, leaving its management to an individual unacquainted with its defects; besides, from the said testimony it is proved, that the current, together with the sudden falling of the wind, concurred in causing this disaster to the vessel.

On the 6th of January last I received the original of the enclosed copy, No. 5, from the American commodore, which I answer as per copy No. 6, and from it your excellency will learn that on giving the explanations which were required from me, I instructed the collector of the custom-house to deliver to the order of the said American commodore the papers of the Colonel Blum, which was done. Under the same date I wrote to the public ministry, in order to advance, with all possible despatch, the decision of this affair, as it is very necessary to maintain the morality of the officers in the fiscal service. In this province, with so many places of easy access for disembarkation, the utmost rigor is indispensable against the infractions of the fiscal laws, in order to obtain by terror that which cannot be had by common inspection, because the present resources of the province do not allow the numerous points of the islands of the Archipelago to be conveniently guarded.

In view of all that has been stated, and of that which is divulged in the documents now before the court, and of which a copy of the most important part go with this despatch, I am convinced that the claim in question cannot, nor ought it to proceed, as the disastrous occurrence of the loss of the vessel was occasioned, not so much on account of the master of the Colonel Blum having cast anchor at a point prohibited by the fiscal laws of the country, but especially because he disobeyed the instructions made twenty-four hours before by the custom-house, that he should leave that anchorage for the port of Santa Maria or of Madama, under penalty of paying the fine imposed by the lawful regulations. Besides, the master will find no excuse before any maritime tribunal for having forsaken his vessel, and remaining on shore when he knew the custom-house had sent the patrão mor to navigate the said schooner to the lawful point of that island. It appears, therefore, that the unfortunate occurrence which happened to the Colonel Blum cannot be charged upon the patrão mor, and that we should await the conclusion of the case, now pending before the judge of the province, which result I shall opportunely transmit to your excellency's knowledge. God preserve your excellency.

JOAO DE FOUTES PEREIRA DE MELLO,
Chief of Division, Governor General.

XVII.

Mr. Clay to Count Tojal.

LEGATION OF THE UNITED STATES,
Lisbon, May 29, 1850.

The undersigned, chargé d'affaires of the United States of America, has the honor to acknowledge the receipt of the note of his excellency the

Conde de Tojal, dated the 28th instant, with the accompanying document, which gives to him information of the rejection by her Majesty's government of the claim of the owners, &c., of the American schooner Col. Blum.

The undersigned cannot consider the reasons advanced for the rejection of this claim as in the slightest degree satisfactory. The schooner was wrecked while in the charge of the Portuguese authority, by design or by the gross incompetency of the patrão mor, as is abundantly found by impartial testimony; and even had she incurred the penalty of a fine of \$576, as alleged, but which the undersigned does not for a moment admit, the government of her Majesty is bound in justice to indemnify the interested parties for the damage occasioned by wilfulness or incapacity of its officer.

The undersigned regrets extremely that the government of her Majesty has thus thought proper to reject the last of the five principal claims for indemnity sought by his government for her injured citizens.

As to the proposition to refer all the reclamations to an arbiter, the undersigned can only say that his instructions do not authorise him to accede to it.

He renews to his excellency assurances of the distinguished consideration with which he has the honor to remain his most obedient servant,

JAMES B. CLAY.

His excellency CONDE DE TOJAL,

Minister and Secretary of State for the office for Foreign Affairs.

THIRD SERIES.

CORRESPONDENCE RELATING TO DIVERSE CLAIMS OF PORTUGUESE SUBJECTS AGAINST THE GOVERNMENT OF THE UNITED STATES.

No. 1.

Mr. Joseph Corrêa de Serra to Mr. Monroe.

WASHINGTON, December 20, 1816.

SIR: A faithful copy has been taken at my request, of a paper delivered to the Hon. St. George Tucker, district judge of the United States for the district of Virginia, on the demand thereof by him of Thomas Nelson, collector of the port of New York. This paper purports to be instructions given by Thomas Taylor of Baltimore, under the authority of the persons who have assumed the powers of government in Buenos Ayres, to the ship *Romp*, Captain Fisk, to act as a privateer against the subjects of Spain. That respectable monarchy being in direct intercourse with the United States, and having near them their own proper representative, no occasion would exist for my official interference (notwithstanding the old and recent ties that unite the two royal families) if Mr. Taylor had not directed captain Fisk in the same instructions, to act in the like manner against the subjects of my sovereign, in case his Majesty be at war with the above self-styled government of Buenos Ayres.

Mr. Taylor of Baltimore, is an American citizen; the ship *Romp* was an American ship, no doubt only fictitiously alienated, since the captain continued the same, and the bulk of the crew remained composed of American citizens. This privateer, it is true, did not attack any Portuguese vessel, but he was directed to do so conditionally by order and under the signature of an American citizen, who dares in his instructions to assign seven ports of the United States for the privateer to bring in his prizes, and named in each of them the agents who will take care of them.

It is certainly my duty not to wait silently and tamely for the perpetration of such an act; inasmuch as exertions of the same or similar nature continue to be made in the same place, by the same set of individuals, as it appears by the following facts, which are the result of my special inquiries, and I have the honor to present for your consideration.

The 18th of the last month, (November,) the frigate *Clifton*, Captain Davey, armed with thirty-two guns of various calibres and a crew of two hundred men sailed from Baltimore for Buenos Ayres. This ship laid anchor below that port, where it has remained for about a fortnight or more, waiting for the American ship *Independence of the South*, armed with sixteen guns, and for the ships *Romp*, *Tuckahoe*, *Montezuma* and *Spanker*, and two others newly constructed, which were fitting with great activity and which had not yet got names. All were to sail together to cruise in the eastern and western seas of South America, under the insurgent colors of Buenos Ayres. No doubt can be entertained of their instructions being the same as those of Captain Fisk, and that they will act hostilely against

Portuguese ships. Besides private information on which I can rely, the mere fact of assuming such colors, is in the present state of things equal to a direct proof.

There is good foundation to believe that nearly the same was the case of the ship *Swift*, Captain Huffington, which sailed from Baltimore the 3d of last August, with the ostensible designation for the Havanna, armed with fourteen guns, and a crew of one hundred and forty men, and the ship *Maria*, Captain Hafford, which left the same port the 25th of the same month, armed, and with a large crew. Both are understood to have displayed at sea Buenos Ayres colors, and most likely with the same instructions as Captain Fisk.

These armaments, sir, are carried on in the port of Baltimore, in a barefaced way, only such a very thin veil put on them, which has been deemed by some sufficient to screen the culprits from the effect of the actual insufficient laws. It is not only from information I speak, but twice I have lately been in Baltimore and have personally ascertained the progress and nature of this business.

Such facts need no epithets to be qualified, and I have judged superfluous the use of them; they show at first sight their immoral and criminal nature, and their opposition to the laws of nations. I know too perfectly the honorable feelings, both of this government and of this nation, to harbor the least suspicion that they view these acts in any other light. The fault is entirely in the insufficiency of the existing laws and the many evasions they afford to guilty persons, particularly if assisted by chicanery. Perhaps the past American legislators provided so imperfectly for such occurrences, because they believed them impossible.

But since they come to happen, nothing but the enactment of new laws, sufficient for the emergency, can justify this nation in the eyes of the civilized world. If the citizens of the United States are not prevented by the laws of their country from becoming in masses acting parties in wars which are not their own, will not that give of course to this nation a piratical, odious character and complexion, unworthy of her, in the eyes of foreign nations? Her peace and tranquillity would also be endangered, because any government so injured has a natural right to resent and repay to the utmost of her power, injuries sustained so much against the usages of the civilized world. Must then the honor and peace of the American people—of nine millions of individuals, the immense majority of whom, to my perfect knowledge, bear an honest, honorable, pacific character—be put in jeopardy by the culpable covetousness of a few men in a seaport or other place, who, to acquire fortunes, do not scruple to become pirates? privateering being in fact no better, when practised in any other but each man's own country's wars.

I apply therefore to this government, in the present instance, not to raise alterations or to require satisfaction, which the constitution of the United States has not perhaps enabled them to give; because I know that the supreme Executive of this nation, all-powerful when supported by law, is constitutionally inactive when unsupported by it. What I solicit of him is the proposition to Congress of such provisions by law as will prevent such attempts for the future. I am persuaded that my magnanimous sovereign will receive a more dignified satisfaction, and worthier of his high character, by the enactment of such laws by the United States, which, ensuring the respect due to his flag for the future, would show their regard for his Majesty, than in the punishment of a few obscure offenders, (even if attain-

able,) who, disowned as they are by the United States, may, no doubt, if they take any unwarrantable liberty with the property of his Majesty's subjects, meet the fate every honest mind wishes to them, and serve as examples and warning to those who in future may feel piratical dispositions. I rely on the President's wisdom—and the wish I am sure he must feel of putting an end to these shameful practices—that he will take the proper measures to have my just requisition fulfilled.

As, by the powerful reason alleged in the beginning, I confine myself strictly within the limits of my powers and the claims of my sovereign, I take this occasion of recalling to this government the friendly and noble conduct of his Majesty during their late contest with Great Britain. Though their adversary was his most constant and effectual ally, who had readily come to assist him to repel a lawless invasion, and they were then fighting together the common enemy, his Majesty forbade his subjects to take any part in the quarrel, and ordered a strict neutrality to be observed, which in no single instance was broken either by his officers or his subjects. The enactment, therefore, by Congress, of such laws, would be but a just requital from them towards a generous, equitable monarch declaredly in a state of amity with the United States.

I am, sir, with great esteem and respect your obedient servant,

JOSEPH CORREA DE SERRA.

Hon. JAMES MONROE.

No. 2.

Mr. Monroe to Mr. Joseph Corrêa de Serra.

DEPARTMENT OF STATE, December 27, 1816.

SIR: I have had the honor to receive your letter of the 20th inst., complaining of certain equipments of armed vessels from Baltimore, and of instructions given to the commander of one of those vessels to attack conditionally the vessels of your sovereign, the king of Portugal and Brazil. You are aware that these vessels are equipped without any authority from this government, and on pretexts very different from those which you assign. You are also aware that the existing laws do not authorize the President to interfere in such cases, and it is your object to obtain such amendment of them as may be sufficient for the purpose.

I have communicated your letter to the President, and have now the honor to transmit to you a copy of a message which he has addressed to Congress on the subject, with a view to obtain such an extension, by law, of the executive power, as will be necessary to preserve the strict neutrality of the United States in the existing war between Spain and the Spanish colonies, and effectually to guard against the danger in regard to the vessels of your sovereign, which you have anticipated.

As soon as a law may be passed on this subject, I shall have the honor of communicating it to you, and I avail myself of this opportunity of assuring you of the great interest which the President takes in cultivating the most friendly relations with your sovereign, his subjects and dominions.

I have the honor to be, &c., &c.,

JAMES MONROE.

Mr. JOSEPH CORREA DE SERRA.

No. 3.

Richard Rush to the Chevalier Corrêa de Serra.

DEPARTMENT OF STATE,

Washington, March 13, 1817.

SIR: The act of Congress passed on the third of this month, to preserve more effectually the neutral relations of the United States, being upon the subject brought under consideration in your letter to this department of the 20th of December last, I have the honor, by direction of the President, to transmit for your information, the enclosed copy of it.

The President feels sure that your sovereign will perceive in the spirit and scope of its provisions, a distinguished proof of the desire which animates this nation to maintain with his dominions and subjects the most harmonious relations.

I have the honor to be, &c., &c.,
The Chevalier CORREA DE SERRA.

RICHARD RUSH.

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No. 4.

Mr. Joseph Corrêa de Serra to Mr. Rush, Acting Secretary of State.

WASHINGTON, May 13, 1817.

SIR: Thoroughly convinced as I am of the upright and dignified principles of the President, and of the sound maxims on which the actual government of the United States is proceeding, I cannot harbor the least uneasiness about the line of conduct which they will follow in the threatened case of the arrival of any adventurer, who may style himself accredited agent of the rebels of Pernambuco. But you will easily agree that I cannot nor ought to entertain any degree of security about the conduct which the greedy and immoral part of your commercial citizens, particularly in Baltimore and New York, (with whom your government has had already so many reasons of being dissatisfied,) will pursue in the actual unfortunate circumstances. Providentially the law passed in the last session of Congress obviates great part of the evils which could be feared from people of this description, and I no doubt will zealously avail myself of the means it affords of serving the interests of my sovereign. I must represent, however, to this government, that the lukewarm acts of some of the United States officers in the seaports in past occurrences of a like nature, do not give me that full confidence in them that I could wish to have. I am persuaded, therefore, that if the President was pleased to have them put in mind of the vigilance he requires from them in order to answer his own feelings on this subject, such a step would avoid negligence on their part, and continue uninterrupted the good harmony between Portugal and the United States which will always be the chief aim of my endeavors, as it is also the fond wish of my government.

I remain, with the highest consideration and esteem, sir, your most obedient servant,

JOSEPH CORREA DE SERRA.

Hon. RICHARD RUSH,
Acting Secretary of State.

No. 5.

Mr. Joseph Corrêa de Serra to Mr. John Q. Adams, Secretary of State.

WASHINGTON, March 8, 1818.

SIR: I am ordered to lay before the eyes of this government the case of three Portuguese ships, captured by privateers fitted in the United States, manned by American crews, and commanded by American captains, though under insurgent colors. An extract of the documents that prove these facts I have the honor of enclosing in the annexed paper. The documents themselves are at your disposition when required.

His Majesty's government has already said in the official note of the 19th of March last, directed to the honorable Mr. Sumpter, about the first of these captures, that the perfect amity which his Majesty entertained for the United States, and his wish of further entertaining it, persuaded him that this government would be willing to give satisfaction and indemnification for this injury done to his subjects and insult offered to his flag by these unworthy American citizens. It remains nothing for me to add than to express my perfect reliance in the justice and wisdom of this government, and in the principles acknowledged by him on former occasions.

I profit with pleasure of this occasion of expressing to you the respect and high consideration with which I am, sir, your most obedient servant,

JOSEPH CORREA DE SERRA.

Hon. J. Q. ADAMS.

List of the Portuguese prizes, to accompany the letter concerning them, written to the Hon. J. Q. Adams, March 8, 1818.

1. Yacht, *Senhor de Alivio*; going from Madeira to St. Michael; taken the 19th December, 1816, in latitude 33, longitude 17° west of Lisbon, by a privateer schooner of one hundred and ten tons, manned by sixty men, all Americans except two. This privateer was from Baltimore, and took another Portuguese prize, about which I have no documents.

2. Galley, "*Marquis of Pombal*;" going from Pernambuco to Porto; taken the 26th of March, 1817, in latitude 38° 30', longitude 36° west of London, by the privateer "*Buenos Ayres Patriot*," Captain J. W. Stephen, of Baltimore; all the crew, composed of one hundred and twelve men, were Americans, one excepted.

3. Brig, *St. John Protector*; going from Bahia to Lisbon; captured the 13th of —, 1817, in latitude 38°, longitude 18° 30' west of London. It seems from the numerous depositions to have been captured by the same privateer, the *Buenos Ayres Patriot*, Captain S. W. Stephen. From two of the depositions it appears that the intention of the privateer was to send the prize to St. Domingo.

No. 6.

*John Q. Adams to the Chevalier Corrêa de Serra.*DEPARTMENT OF STATE,
March 14, 1810.

SIR : Your letter of the 8th instant, complaining of the capture of three Portuguese ships by privateers, said to be fitted out in the United States, manned by American crews and commanded by American captains, though under colors other than those of the United States, has been received.

The government of the United States having used all the means in its power to prevent the fitting out and arming of vessels in their ports to cruise against any nation with whom they are at peace, and having faithfully carried into execution the laws enacted to preserve inviolate the neutral and pacific obligations of this Union, cannot consider itself bound to indemnify individual foreigners for losses by captures, over which the United States have neither control nor jurisdiction. For such events no nation can in principle nor does in practice hold itself responsible. A decisive reason for this, if there were no other, is the inability to provide a tribunal before which the facts can be proved.

The documents to which you refer must of course be *ex parte* statements, which in Portugal or in Brazil as well as in this country, could only serve as a foundation for actions in damages, or for the prosecution and trial of the persons supposed to have committed the depredations and outrages alleged in them. Should the parties come within the jurisdiction of the United States, there are courts of admiralty competent to ascertain the facts upon litigation between them, to punish the outrages which may be duly proved, and to restore the property to its rightful owners should it also be brought within our jurisdiction and found upon judicial inquiry to have been taken in the manner represented by your letter. By the universal laws of nations the obligations of the American government extend no further. * * *

Be pleased, sir, to accept the assurance, &c.,

JOHN Q. ADAMS.

The Chevalier CORREA DE SERRA.

No. 7.

Mr. Joseph Corrêa de Serra to Mr. Adams.

WASHINGTON, October 15, 1818.

SIR : This very moment I receive the intelligence that a ship is fitting in the Patuxent to cruise against the Portuguese commerce, and the ship so fitting is no other than the Portuguese fine brig Soam Sexto, taken some weeks before by the Baltimorean privateer Fortuna, sent into Beaufort, North Carolina, and the goods shipped for New York and Philadelphia, where they are under reclamation. Captain Taylor left Baltimore on Sunday to take charge of her, and the night before the last a great deal of stores left Baltimore for this ship.

You know perfectly to what extent the supreme executive can exert his power to prevent such a breach of all moral and international law, and I

dare not doubt that it will be exerted, persuaded as I am of the honorable feelings of this government.

Receive the assurance of the high esteem and consideration with which I am, sir, your most obedient servant,

JOSEPH CORREA DE SERRA.

Hon. JOHN Q. ADAMS.

P. S. There exist now in Baltimore many persons who are able to identify the ship.

No. 8.

John Q. Adams to the Chevalier Corrêa de Serra.

DEPARTMENT OF STATE,

October 23, 1818.

SIR: I have had the honor of receiving and have laid before the President of the United States your letter of the 15th instant. I am directed by him to inform you, that if you will furnish a list of the names of the persons chargeable with a violation of the laws of the United States in fitting out and arming a vessel within the United States for the purpose of cruising against the subjects of your sovereign, and of the witnesses by whose testimony the charge can be substantiated, directions will be given to the attorney of the United States for the district of Maryland, to institute suits against the persons complained of in the proper court competent to their trial.

I pray you, sir, &c., &c., &c.

JOHN Q. ADAMS.

The Chevalier CORREA DE SERRA.

No. 9.

Mr. Joseph Corrêa de Serra to Mr. Adams.

WASHINGTON, November 13, 1818.

SIR: I am just now informed that the grand jury of Baltimore must have found a true libel against the persons accused of piracy. In the present moment the evidence which is collecting against them is not yet ready, though in great forwardness. It is of the interest of both this government and mine that the trial be put off till the proper evidence be collected; I am also informed by a good legal authority that this can be lawfully done on a proper application, which I am now making, but by advice of the same I apply also to this government, who being a party, from the justice of its sentiments interested in this prosecution, can require this necessary delay of the trial, with a much superior efficacy.

Accept, sir, the assurance of the high consideration and esteem with which I am your most obedient servant,

JOSEPH CORREA DE SERRA.

Hon. JOHN QUINCY ADAMS,

Secretary of State.

No. 10.

Mr. Corrêa de Serra to Mr. Adams.

WASHINGTON, November 14, 1818. I

SIR: You will excuse the quick succession of my notes. It is not my intention to importunate you, but it is the fault of the events.

Obliged by my duty to inquire into the nature of the armed ships that have of late insulted the flag of my sovereign, and committed incalculable depredations on the property of his subjects, I have found with sorrow multiplied proofs that many of them are owned by citizens of the United States; have been fitted in ports of the Union; and many of them have either smuggled into this country the goods so stolen from a nation in full peace and friendship with the United States, or entered the captured ships and cargoes by unlawful means in several ports of the Union.

I am in duty bound to carry such facts before the courts of justice which your constitution has provided. But I am alarmed at the thick crowd of individuals who are engaged in this iniquitous business. Not only those that may be supposed to partake directly and indirectly in the plunder, and their friends, but also a vast number of people otherwise honest, who have the misfortune of believing that they do a meritorious action in supporting foreign insurrections, and are thought by some newspapers to look on these robberies as patriotic and praiseworthy. This last class of persons, widely spread everywhere—many of them having it in their power to help the delinquents some way or other—oppose great difficulties to every prosecution instituted by a foreign minister.

Great care, I see, has been taken to intercept the notice of such facts from the knowledge of the supreme Executive of this nation, who, as the natural guardian both of the execution of the existing laws and of the national honor, would undoubtedly, if they had reached this knowledge in a decisive light, employ all the powers with which the constitution invests him to support both these objects committed to his care.

The honorable earnestness with which the President, in your answer of the 23d October last, (to my representation about the ship fitting in the Patuxent,) offered to have the delinquent prosecuted by the federal courts, in case the evidence was sufficient, gives me a firm reliance in the nature of his sentiments on this subject, and to them I confidently have now recourse.

I beg, therefore, the President would be pleased to give directions to the Attorney General of the United States to lay hold, in his ministerial capacity, of the depositions, witnesses and indicia, that I have collected to act in the public name in proportion as they are strong and valid. I would be very happy to put them all thus in his hands, with the certainty that they would have all the effect due to their respective merit, and that no extrinsic difficulties would be felt in the legal proceedings. By this means, also, I believe the national character, which the delinquents of whom I complain have attempted to impair, would appear in the face of the world in all the lustre it deserves.

As soon as I am certified of the President's will I shall hasten to put all these documents in the hands of the Attorney General.

Accept, sir, the assurance of the high esteem and consideration with which I am your most obedient servant,

JOSEPH CORREA DE SERRA.

HON. JOHN QUINCY ADAMS, *Secretary of State.*

No. 11.

J. Q. Adams to the Chevalier Corrêa de Serra.

DEPARTMENT OF STATE,

November 18, 1818.

SIR : I have had the honor of receiving your letters of the 13th and 14th instants, and am directed by the President to inform you that the Attorney General of the United States is already at Baltimore, engaged in support of the prosecution of the indictments which have been found by the grand jury there, before the circuit court of the United States, and that all the documents in your hands and to which your letter of the 14th instant refers, may, if you think proper, be transmitted to him. The postponement of trial upon a criminal prosecution operates with so much hardship upon the party accused that it is rarely granted by our courts, and not without the assignment of very defective reasons, as well why the evidence expected to be produced has not been obtained, as arising from the character of the evidence itself and the bearing which it would have on the case if produced. Should such reasons in the present instance exist, they may be made known by the prosecutors at Baltimore, to the Attorney General and district attorney, who will not fail to urge them to the court.

Be pleased, sir, &c., &c., &c.,

JOHN QUINCY ADAMS.

The Chevalier CORREA DE SERRA.

No. 12.

Mr. Corrêa de Serra to Mr. Adams.

WASHINGTON, December 11, 1818.

SIR : In obedience to the precise orders of my sovereign I must put in the presence of the government of the United States, that the armed vessel, Irresistible, under the so called Artigan colors, has been committing depredations and unwarrantable outrages on the coast of Brazil. According to the uniform depositions of a great number of persons who for different lapses of time were on board of the above vessel, and were afterwards landed on the Brazilian coast, it is proved that John Daniels, the commander of said ship, is of Baltimore, and the crew are all Americans. No doubt the chance of meeting chastising forces exposes him and his crew to feel the consequences of the violation of the law of nations; but, in the same time, as there is a certainty of this captain and ship coming to some port of the United States as they have been used to do from time to time, his Majesty confidently expects, from the good friendship existing between him and this government, that such occasion may be watched, in order to bring the said captain and crew under the reach of the laws that punish such scandalous proceedings.

Ulterior intelligence gives the information that Captain Daniels has changed the name of his ship and calls it now the General Artigas, but the

name of the ship is immaterial, because it more than once has been changed. It is always originally the Vicuna, of Baltimore, Captain John Daniels.

Be pleased, sir, to accept the renewed assurance of my very distinguished consideration.

JOSEPH CORREA DE SERRA.

HON. JOHN QUINCY ADAMS,
Secretary of State.

No. 13.

Mr. Corrêa de Serra to Mr. Adams.

WASHINGTON, February 4, 1819.

SIR: I have the honor of representing to this government that the law of the 2d session of the 14th Congress, entitled An act more effectually to preserve the neutral relations of the United States, sanctioned by the supreme executive, the 3d March, 1817, (which is the thirty-eighth chapter of the laws of that session,) expires the 3d of March, of the present year, 1819.

This law, so honorable to the spirit of justice of the government that enacted it, has also been found in practice the most useful of the laws existing on this subject. Unhappily the continuance and recent aggravations of the evil it was intended to remedy, seem to render it necessary that this law may still continue in force for some time.

I apply therefore to this government in order to obtain the continuance of this law so necessary to the peaceful trade of the subjects of my sovereign and so honorable to the character of the United States, perfectly confident that my request is according to the just and friendly intentions of the chief magistrate and legislators of the Union, and conducive to the consolidation of good harmony between my sovereign and the United States.

You will accept, I pray, the assurance of the high esteem and consideration with which I am, sir,

Your most obedient faithful servant,

JOSEPH CORREA DE SERRA.

HON. JOHN QUINCY ADAMS,
Secretary of State.

No. 14.

J. Q. Adams to the Chevalier Corrêa de Serra.

DEPARTMENT OF STATE,
Washington, February 9, 1819.

SIR: In answer to your letter of the 4th instant, I have the honor of informing you, that the act of Congress of 3d March, 1817, to which it refers, was repealed by the act of the 20th of April last, entitled An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned, being the eighth chapter

of the laws of the last session. On referring to this last mentioned statute, which is not of limited duration, you will find that the provisions of the temporary act of 3d March, 1817, are re-enacted by it.

I pray you, sir, &c.,

JOHN QUINCY ADAMS.

The Chevalier CORREA DE SERRA.

No. 15.

Mr. Corrêa de Serra to Mr. Adams.

WASHINGTON, March 17, 1819.

SIR: Though I have the honor of a conference with you on the subject touched in this paper, I shall take the liberty to leave with you this summary of my views, as a memorandum to recall them to your consideration.

Since the moment this government gave such a distinguished proof of its justice and friendly dispositions towards mine as that of agreeing to the request of taking in its hands the legal satisfaction to the insulted flag of my sovereign, by gratitude for what it was doing, and out of a due regard to its feelings, I have abstained from written applications about the new individual offences the armed ships of which I complain have still continued to commit. They have been, however, both atrocious and frequent. Some of them have reached you officially by American citizens, who begin at last to suffer by the acts of these lawless crews.

But, sir, though the honorable and friendly course that this government has adopted insures me of the punishment of the culprits in any case in which the existing laws can attain them, still I cannot be at rest on the fate of the commerce of the subjects of my sovereign. It is impossible, though the courts of justice cannot attain them all, to dissemble the number of and the forces employed by the persons in the United States interested in this iniquitous pursuit of plundering the lawful property of an inoffensive friendly nation. The ultimate consequences of such a state of things must unavoidably be to spread immorality and corruption in your country, tarnish the fair character of your nation, and to excite feelings of bitterness and distrust towards her in the breasts of a government and a nation which Nature, it would seem, had destined by their situation to be always your friend, and a useful and an advantageous one.

Our case, sir, is widely different from that of Spain; it admits of another and radical remedy. This remedy I am persuaded is in the power of this government; consequently I am confident it will administer it, and by that means bind more closely our two countries, which these profligate people are striving as much as is in their power to alienate from each other.

The insurgent governments of Spanish America are in a state of civil war with their metropolis, and are in possession of extensive sea-coasts and of a great number of ports. They have in consequence the means and the power of navigating, from which and only from which originate the means, power and right of fighting by sea. In such case the law of nations allows the neutral powers to keep their neutrality and to treat on an equal footing the vessels of both parties. This impartial and dignified course has been adopted in this civil war by the wisdom and justice of both our govern-

ments, and the ships of both have been equally respected by the privateers of all these insurgent flags, with but rare exceptions. Only a pretended Artigan flag runs the seas, taking our ships and property; and it happens that this flag is the only one not entitled to the neutrality which by the law of nations may be allowed to the others. I can, in the capacity of minister of my sovereign certify you solemnly, and officially too if necessary, that Artigas and his followers have been expelled far from the countries that could afford them the least means and power of navigating, and consequently have no right to fight by sea. What become, then, the privateers under this flag—the rights of privateers, according to reason and to every publicist, being but a partial delegation of the rights of the authority that gives him the commission?

This phenomenon seems quite new in the history of the civilized world. Let us suppose that a Swiss flag and Swiss privateers made their appearance at sea, what would be the general astonishment? Where is the Swiss port from which they could take their departure and be fitted or refitted? where the Swiss court of admiralty that could judge their prizes? If some other nation allows them the use of their ports and courts, she deserts by that act the ground of neutrality, becomes the ally offensive, making common cause with the Helvetic body by lending him the means he has not by himself of annoying his opponents.

It is most certainly very far from the upright instructions of this government, that Baltimore or any port of the Union be in the above predicament. Still the wicked people of whom I complain make it so in fact. The Artigan flag, which has not a foot-length of seashore in South America where it can show itself, is freely and frequently waving in the port of Baltimore; and even the Portuguese prizes already under the safeguard of the United States have been polluted by it every Sunday without intermission. Artigan cockades are frequently met with in that city in the hats of American citizens unworthy the honor of this name. How does it happen that in the time Artigas (if existing at all in this moment) is wandering with very few followers, lurking in the far inland forests near Carrientes, the port of Baltimore contains very often armed ships bearing his flag; and people born in the United States, who never saw the country where he lived, are found in that city wearing the badges of his service? No doubt can exist of the unlawfulness of such things, and of their direct opposition to the honorable intentions of this government and to the law of nations.

The law enacted the 3d of this month, supporting the supreme Executive in the employment of the national forces to suppress piracy, such as it is defined by the law of nations, comprehends this branch of it. But my mentioning this law is only incidental; I rely much more on the expedients that the justice and wisdom of the Executive may inspire to him, than in any thing that may occur to my mind. If the Artigan flag is once declared illegal, and the prizes made under it acts of piracy, all occasions of bitterness and mistrust are done away, and our two nations are immediately in those relations, each to the other, that the nature of their situations naturally calls for—perpetual amity on both sides and friendly mutual advantageous intercourse for ever.

Your country possesses almost all the industry in arts that exists in the two Americas, and has taken such an early start, with such rapid strides, that many centuries will pass before she loses the advantage. Mine possesses the richest productions in the world. No territorial jealousies can

exist among them; no rivalry or concurrence can ever happen in the articles of their commerce. Our two governments are the only ones of America that are acknowledged by all mankind, and each of them will be always the paramount power in his respective moiety of this hemisphere. When America is to become of age and be ruled by a system of herself, these two governments will always be the directorial ones of the whole system. How many ponderous reasons these of mutual regard and good intelligence, even without any entangling treaties or alliances. But thanks to the piratical Baltimore patriotism, a degree of distrust has very naturally taken place in the hearts of the Portuguese, which I am confident the just proceedings of your government, chiefly this which I now request, will allay and extinguish.

Permit me, sir, to give you a just idea of what these feelings must be in the present moment. .

If Tecumseh, in the war of Tippecanoe, had given privateer commissions to Portuguese subjects against the commerce of the United States, and those privateers had taken so many American ships and plundered so many millions value as the Baltimoreans have now taken Portuguese—if they had carried the prizes to ports of the crown of Portugal, finding there so many abettors as the present pirates have unhappily found in the ports of America—if they had entered your ports and received there all the offices of hospitality under the Portuguese flag, and immediately out of them had hoisted Tecumseh's flag and captured the ships going out of the same ports—if they had made descents on the territory of the United States, plundered public and private property to considerable amount, murdered the people, insulted and maimed the magistrates, &c., what would be the sentiments of every good American towards Portugal and Portuguese?—at least until the moment that my government would effectually put an end to such acts of his subjects.

Very happily the federal courts seem of late to have understood and followed the sentiments of your government; and I rejoice to have it in my power to announce to mine the restitution to the lawful owners of the ships Monte Alego and Loisidade Feliz. But you see clearly that the right opinions of particular judges and private lawyers are but a partial and too precarious remedy; government only declaring the unlawfulness of the pretended Artigan flag, can put an end to these evils and restore by that the course of mutual intimacy between our two nations. This is what I have the honor to put under his eyes with the most perfect confidence in his feelings and wisdom.

Accept, sir, the renewed assurance of my respect and consideration.

JOSEPH CORREA DE SERRA.

Hon. JOHN QUINCY ADAMS, *Secretary of State.*

No. 16.

J. Q. Adams to Chevalier Corrêa de Serra.

DEPARTMENT OF STATE,

Washington, April 22, 1819.

SIR: I had the honor of receiving from you a letter dated the 11th of December last, stating by the precise orders of your sovereign, that the

armed vessel, called the Irresistible, had been committing depredations and outrages on the coast of Brazil, and that from the depositions taken there of various persons who had been on board of that vessel, it appeared that her commander, John Daniels, was of Baltimore, and all her crew were Americans. It has come to the knowledge of this government that, within a very few days, John D. Daniels, supposed to be the person mentioned in your letter, has returned to the United States, and is now at Baltimore. The attorney of the United States for the district of Maryland, under instructions from this department, will commence a prosecution against him if evidence shall appear sufficient for convicting him of having violated the laws of the United States, by outrages committed upon any of the subjects of Portugal. I have the honor of giving you this notice in reference to your letter above mentioned, and of requesting you to give directions that any testimony which may be material for the commencement of a prosecution, and which it may be in your power to indicate, may be made known to Elias Glenn, the district attorney of the United States, at Baltimore, who is directed to prosecute, conformably to the laws, any person against whom the evidence obtainable shall be sufficient to warrant his conviction. Your letter has hitherto remained unanswered only because the person complained of having been without the jurisdiction of the United States, no measures could be taken to bring him to trial.

I avail myself, &c., &c.,

JOHN QUINCY ADAMS.

Chevalier CORREA DE SERRA, &c.

No. 17.

Mr. Corrêa de Serra to Mr. Adams.

PHILADELPHIA, November 23, 1819.

SIR: I have the honor of submitting to you the following facts and considerations:

During more than two years I have been obliged by my duty to oppose the systematic and organized depredations daily committed on the property of Portuguese subjects by people living in the United States, and with ships fitted in ports of the Union to the ruin of the commerce of Portugal. I do justice to, and am grateful for the proceedings of the Executive, in order to put a stop to these depredations, but the evil is rather increasing. I can present to you if required, a list of fifty Portuguese ships almost all richly laden, some of them East Indiamen, which have been taken by these people during the period of full peace. This is not the whole loss we have sustained, this list comprehending only those captures of which I have received official complaints. The victims have been many more, besides violations of territory by landing and plundering ashore with shocking circumstances.

One city alone on this coast has armed twenty-six ships which prey on our vitals, and a week ago three armed ships of this nature were in that port waiting for a favorable occasion of sailing for a cruise. Certainly the people who commit these excesses are not the United States, but nevertheless they live in the United States and employ against us the resources which this situation allows them. It is impossible to view them

otherwise than a wide extended and powerful tribe of infidels, worse still than those of North Africa. The North Africans make prizes with leave of their government according to their laws and after a declaration of war; but these worse infidels of whom I speak, make prizes from nations friendly to the United States against the will of the government of the United States, and in spite of the laws of the United States. They are more powerful than the African infidels, because the whole coast of Barbary does not possess such a strength of privateers. They are numerous and widely scattered, not only at sea for action, but ashore likewise to keep their ground against the obvious and plain sense of your laws, since most generally wherever they have been called to the law, they have found abettors who have helped them to invade the laws by formalities.

I shall not tire you with the numerous instances of these facts, but it may be easily conceived how I am heartily sick of receiving frequent communications of Portuguese property stolen, of delinquents inconceivably acquitted, letters from Portuguese merchants deeply injured in their fortunes, and seeing me (as often as has been the case) oppressed by prayers for bread from Portuguese sailors thrown penniless on the shores after their ships had been captured.

The Executive having honorably exerted the powers with which your constitution invests him, and the evil he wished to stop being found too refractory, it would be mere and fruitless importunity if I continued with individual complaints except by positive orders. This government is the only proper judge of what constitutional depositions or arrangements may be established for the enforcement of the laws, and he alone has the means of obtaining them, which are constitutionally shut to any foreign minister; I trust in the wisdom and justice of this government that he will find the proper means of putting an end to this monstrous infidel conspiracy, so heterogeneous to the very nature of the United States.

Before such convenient means are established, the efforts of a Portuguese minister on this subject, (the only one of importance at present between the two nations,) are of little profit to the interests of this sovereign. Relying confidently on the successful efforts of the government to bring forth such a desirable order of things, I choose this moment to pay a visit to Brazil, where I am authorized by his Majesty to go. My age and my private affairs do not allow much delay in making use of this permission, and I intend to profit by the first proper occasion that may offer. The arrangements for my departure will require my personal exertions, and it will not be consequently in my power to make an early or long residence in Washington this winter. As soon as I shall be able, I will present myself there to pay my due obeisance to the President of the United States, and my respects to you.

Accept the assurance of the high consideration and esteem, with which I have the honor to be, sir, your most obedient servant,

JOSEPH CORREA DE SERRA.

Hon. JOHN Q. ADAMS,
Secretary of State.

No. 18.

F. F. de la Figanière to Mr. Clayton.

HER MOST FAITHFUL MAJESTY'S LEGATION,
New York, April 27, 1849.

SIR: I regret that my first communication, on taking charge of the archives and correspondence of this legation, in consequence of her Majesty's Minister's very approaching departure for Europe, should be not only unexpected, but of an unpleasant nature.

It has been represented to this legation that the American brig "Susan," Captain E. Wilford, while in the bay of Rio Janeiro, was advertised as bound for Loanda and Benguilla, in the kingdom of Angola, Africa, and would receive cargo and passengers. Many persons, Portuguese and Brazilians, availed of the opportunity to engage freight and passage. With a cargo of lawful goods, for sundry accounts, regularly cleared by the custom house and the consul-general of Portugal, and with a number of passengers with their requisite passports, the "Susan" set sail from the anchorage, before Rio Janeiro, on the 5th of February last, followed, as is represented, by the United States brig "Perry," Lieutenant commanding Davis. After sailing a short distance beyond fort Santa Cruz, the commander of the "Perry" sent officers and men on board the "Susan," of which they took possession, declaring the brig and all on board to be bound for New York, under charge of Lieutenant Hunter, United States navy. The passengers remonstrated against this proceeding towards them, exhibited their passports to the American officers, which proved they (the Portuguese) were subjects of a friendly power, and protested against the alleged outrage, of compelling them by superior force and threats, as is further alleged, of being put in irons, to abandon their intended destination and respective interests. Lieutenant Hunter, it appears, sent most of the Brazilian passengers on shore, but refused the same privilege to the Portuguese, to the number of twelve, including two colored free servant-women who were returning to their native country, all of whom arrived at this port in the "Susan," on the 24th inst., and immediately noted their protest at the Portuguese consulate, against Lieutenant Davis, Hunter, and their government, for the proceedings had towards them, the loss and damage they have respectively already sustained and may further sustain, and also for the bad treatment they represent to have been subjected to by the American officers, who turned them out of the berths they had paid for, to accommodate the prize crew—deprived them of their provisions, which were unnecessarily wasted, during a disagreeable and painful voyage of seventy-six days, all of which they bore with forbearance, with the conviction that on their arrival the laws of the country and the justice of the American government would redress the wrongs they have endured.

Under these circumstances, and considering that these Portuguese, a list of whose names are herewith enclosed, have claimed the protection of her Majesty's officers in this country, that they have been imprisoned as felons, and are still confined in the common jail of King's county, in this State, when as passengers with regular passports, they should be deemed, as they allege to be, innocent of or unparticipating in any criminal transaction of the captain, officers, and crew of said American brig "Susan," which may have led to her seizure by the naval officers of the United States,

it behooves me to bring their protest and all these circumstances to the knowledge of the American government for redress and indemnity.

I avail myself of this opportunity to offer to you, sir, the assurance of my highest consideration.

F. F. DE LA FIGANIÈRE.

HON. JOHN M. CLAYTON, &c., &c.

List of the twelve Portuguese passengers who were bound to her Majesty's dominions in Africa in the American brig Susan, seized off Cape Frio by the United States brig Perry, arrived at New York 24th April, 1849, under charge of Lieutenant Hunter, U. S. N.

Manuel Antonio Ceiseira Barboza.

José Joaquim da Silva.

José Joaquim Gomes Perreira.

Luis Vidal Cézar.

João Maria Barboza.

Bento Pacheco dos Santos.

Constantino Antonio Osorio Montieso.

Alexandre José da Cruz.

Constantino la Luz.

Ignacio Antonio La Motta Vilira.

Catherina, a free colored servant woman.

Isabel, " " " "

No. 19.

F. F. de la Figanière to Mr. Clayton.

HER MOST FAITHFUL MAJESTY'S LEGATION,
New York, May 5, 1849.

SIR: On the 27th of April last I had the honor to address to you a communication upon the subject of the imprisonment of twelve Portuguese, including two colored free servant-women, who were passengers on board the American brig Susan, seized by the United States brig Perry a short while after leaving Rio de Janeiro, and brought into the port of New York.

I have now to state that all these Portuguese passengers have been released from jail, with the exception of the two colored women, Catherina and Isabel, who have been detained and are now, as I have been informed, under charge of the United States marshal of this district, to await the direction of the President of the United States for their disposition.

The women, Catherina and Isabel, claim their liberty as being free, and state that they were returning to their native country in the capacity of servants to two of the Portuguese passengers, the former as servant to Bento Pacheco dos Santos and the latter to Alexandre José la Cruz. The statement of Santos and Cruz both coincide with those of their servants,

that they are free servants and not slaves. This is clearly proved in their respective passports; and moreover the letters which were granted to Santos and Cruz by the Brazilian and Portuguese authorities in Rio de Janeiro, and certified by the United States consul in that city, to prove their legitimacy as Portuguese subjects, in order to enable them to obtain the requisite passport, mention that they were each accompanied by a colored servant woman.

Considering that these papers are of sufficient authority to establish the freedom of the said colored women, Catherina and Isabel, I am induced respectfully to call your attention to their liberation.

Permit me, sir, to submit the enclosed, a literal translation of an address made to this legation by the Portuguese passengers of the American brig Susan, who have been released, and claim from the government of the United States the necessary means to transport themselves to their intended destination, Lounda and Benzuila, in the kingdom of Angola, Africa.

Knowing the justice of the American government, and hoping that it will take into consideration the facts connected with this claim, which I had the honor of communicating to you in my note of the 27th ultimo, I have only to add that the above mentioned Portuguese passengers of the brig Susan are now abandoned to themselves in a strange city, unable to speak the English language, and devoid of means, and that unless aid is given to them starvation will be the inevitable result.

I avail myself of this opportunity to renew to you, sir, the assurance of my highest consideration.

F. F. DE LA FIGANIERE.

Hon. JOHN M. CLAYTON, &c., &c., &c.

NEW YORK, May 3, 1840.

SIR: The Portuguese who are now in New York, having been forcibly compelled to it by the commander of the American brig of war "Perry," finding themselves entirely disengaged from the authorities, and a scarcity of means not permitting them a longer sojourn in a country where expenses are so great, address themselves to you, sir, as their only protector on the part of the Portuguese government, in order that they may claim from the American government the necessary means to transport them to their first intended destination, considering that the American government is the only cause of their misfortune and losses.

For all,

IGNACIO ANTONIO DE MOTTA VILIRA.

His Excellency the MINISTER RESIDENT OF PORTUGAL.

No. 20.

Mr. Clayton to F. F. de la Figanière.

DEPARTMENT OF STATE,
Washington, May 8, 1849.

SIR: Your note of the 27th ultimo, acquainting me with the capture of the brig "Susan" off Rio de Janeiro, by the United States brig Perry, as a

slaver, and the imprisonment of certain Portuguese (found on board) at New York, whither the captured vessel had been brought as a prize, and asking of this government redress and indemnity, was received and referred (in copy) to the Secretary of the Navy, on the 30th ultimo, and I have now the honor to transmit to you a copy of the reply of that department, covering the letter of Commodore Storer and the report of Lieutenant Commanding John A. Davis, with accompanying papers. These documents will fully explain the whole transaction.

I have the honor also to acknowledge the receipt this day, of your note of the 5th instant, apprising me of the liberation from jail of all the captured Portuguese except two colored women, alleged by you to be free persons, and enclosing the address of those individuals who seek from the American government the means to transport themselves to their original destination in Africa. The case of the "Susan" being now before the tribunals of this country, I do not feel myself at liberty to make any observations upon it, but the questions of redress and indemnity and of supplying the funds to enable the applicants to return home, may, if you think proper, be submitted by you to Congress.

I am, sir, with great respect, your obedient servant,

JOHN M. CLAYTON.

F. F. DE LA FIGANIERE,

Chargé d'Affaires of Portugal, New York.

No. 21.

J. C. de Figanière é Morão to Mr. Clayton.

HER MOST FAITHFUL MAJESTY'S LEGATION,
New York, May 25, 1850.

The attention of her Most Faithful Majesty's government has lately been called by members of her Majesty's suffering subjects, to the numberless depredations upon their property and commerce, in some instances by American privateers, among which the Revenge and the General Tompkins, during the war of 1812, between Great Britain and the United States, but specially to those piratically committed shortly after the settlement of the treaty of peace, through the following years as late as 1820, and even after that year; and as these unlawful depredations have been committed by citizens of the United States, in vessels owned, fitted out, commanded and mostly manned by said citizens, notwithstanding the flag they hoisted or the commission they purported to bear, of the unacknowledged rebel chief, Artigas, the government of Portugal has always held that of the United States bound, by well known principles of the law of nations, to redress the said wrongs committed by its citizens upon the subjects of a friendly power, with which the United States have ever been at peace, and had continued commercial intercourse.

The said government of her Most Faithful Majesty has consequently directed the undersigned, minister resident of Portugal, to have the honor to address the Honorable John M. Clayton, Secretary of State of the United States, for the special purpose of renewing these important negotiations, and urge the final settlement of the above claims by the federal government; ne-

gotiations which had solely been interrupted in consequence of the many political vicissitudes through which Portugal has unfortunately passed for many years.

It would be, the undersigned thinks, supererogatory and useless to employ the time of the Hon. Secretary of State, in perusing, and his own in now repeating, and circumstantially to enumerate, every instance of depredation committed, when his predecessors, and specially José Corrêa de Serra, have already most fully presented to the American government a relation of those illegal captures and robberies, amounting to a very considerable sum of money in the loss of vessels and merchandise, according to the legal authenticated documents in the archives of the legation of Portugal, many of which vessels were brought into the United States ports by their captors, as well as the cargoes of them and others taken on the high seas.

Before the Chevalier Corrêa de Serra left the United States, in 1820, in the month of June of that year, the then Secretary of State of the United States, convinced of the necessity of agreeing to some mode of settlement, and undoubtedly urged by the conclusive representations of the Portuguese minister plenipotentiary, consented to the suggestion that the American government should appoint commissioners, who, together with such other persons as might in like manner be authorized by the government of Portugal, should examine into and estimate the losses and damages arising from the illegal captures referred to.

Should the above mode of coming to a satisfactory and amicable settlement of these long pending and important claims, be preferred by the government of the United States, the undersigned is authorized to come to an understanding with the Hon. Secretary of State upon the subject, and to submit the voluminous documents and papers in his possession, to the joint examination and decision of the commissioners or arbitrators appointed by the American government, on the one part, and the undersigned, in behalf of her Majesty's government, on the other; and, he would suggest, that the said commissioners be authorized and instructed to have counsel or to consult competent persons versed in international and maritime law.

The undersigned, minister of Portugal, avails himself of this opportunity to reiterate to the Hon. John M. Clayton, Secretary of State of the United States, the assurances of his distinguished consideration.

DE FIGANIERE E MORAO.

The Hon. JOHN M. CLAYTON,

Secretary of State of the United States.

No. 22.

Mr. Clayton to Mr. J. C. de Figanrière à Morão.

DEPARTMENT OF STATE,

Washington, May 30, 1850.

The undersigned, Secretary of State of the United States of America, has the honor to acknowledge the receipt of the note which the minister resident of her Most Faithful Majesty addressed to him on the 25th inst., inviting attention to depredations on the commerce of Portugal, committed

thirty or forty years ago, by citizens, as is alleged, of this country, and in vessels owned and fitted out by them, to cruise under the flag of Artigas, the noted Banda oriental chief, for the redress of which unlawful acts the minister of Portugal assures the undersigned that his government has never ceased to hold that of the United States bound by well known principles of the law of nations.

The undersigned is surprised at the re-appearance of these obsolete reclamations, accompanied by the renewal of the ancient proposition, to appoint a joint commission to determine and assess damages, a proposition which was rejected at the time upon substantial grounds; and without the minister's assurance to that effect, the undersigned would not have supposed it credible that Portugal seriously cherished any intention to revive them. In reply, therefore, to the note which the minister of her Most Faithful Majesty has presented in the name of his government, the undersigned must now, by the President's order, inform him that he declines re-opening the proffered discussion.

The correspondence referred to, between the Chevalier Corrêa de Serra and the Secretary of State of the United States, was submitted, under their call, to the United States Senate, in 1824. The undersigned, after a careful perusal of it, has not been able to discover anything in it to warrant the assertion of the minister of her Most Faithful Majesty, that the then Secretary of State of the United States, (Mr. Adams,) "convinced of the necessity," &c., consented to the suggestion then and repeatedly made, of appointing commissioners. On the contrary, the proposition was expressly declined by Mr. Adams, "as there was no precedent for the appointment of such a commission under such circumstances, and as not a single case of capture had been alleged, for which the United States were strictly responsible," as will be seen by examining his note to the Chevalier Corrêa de Serra, of the 30th September, 1820; and again, that to Mr. Amado Grehon, of the 30th April, 1822, copies of which are herewith transmitted for the use of the minister and the government he represents.

Neither leisure nor inclination permit the undersigned to dwell upon the reasons which may have impelled Portugal to the extraordinary course she has adopted at a juncture when the relations of the two countries have become invested with a critical interest; but the undersigned cannot close this note without remarking that the just claim of citizens of this country upon Portugal, which have recently, after many years of neglect, been either denied by that government, or met by propositions of reference to Lisbon merchants and others, will lose none of the merit which characterizes them, nor any portion of that protection which this government has determined to extend to the claimants, by the sudden resuscitation of these unfounded pretensions.

The undersigned avails himself of this occasion to renew to the minister resident of her Most Faithful Majesty, the assurance of his high consideration.

JOHN M. CLAYTON.

The Commander J. C. DE FIGANIERE E MORAO.

No. 23.

J. C. de Figanière è Morão to Mr. Clayton.

HER MOST FAITHFUL MAJESTY'S LEGATION,
New York, May 30, 1850.

SIR: I beg leave to enclose the copy of a letter dated 28th inst., that the proctor for and in behalf of certain skippers, Portuguese subjects, of the cargo laden on board the "Susan," has addressed to me, calling my attention to the claims of his constituents.

I have also been applied to for the same purpose by the consul-general of Portugal in the United States, as attorney for other parties, likewise Portuguese subjects, of whom some were skippers and others passengers on board the same vessel, captured off Rio de Janeiro by the United States brig "Perry," on the 5th February, 1849, and brought into the port of New York.

Upon this subject her Majesty's legation had the honor to address you on the 27th April, 1849, relating the circumstances under which the complainants were induced to ship their goods, and some of them to engage passage to Portuguese Africa; their capture by the above mentioned United States vessel; the treatment they allege to have received at the hands of their captors during the long and perilous passage; and, finally, their imprisonment upon arrival at this port, on the 24th April aforesaid.

Since that period it has been represented to me that the cargo, their property, has been sold by order of the court, while all the passengers themselves were discharged and permitted to depart; as was subsequently communicated to your department, on the 5th May of last year, in which two communications the application was made, in behalf of said Portuguese subjects, for redress and indemnity, as well as for immediate relief to such of these individuals as were bereft of means for their subsistence and departure hence.

On reverting to the answer you were pleased to make on the 8th May of that year, to that application, I find it therein stated, that "the case of the 'Susan' being now before the tribunals of the country, I (you) do not feel myself (yourself) at liberty to make any observations upon it; but the questions of redress and indemnity, and of supplying the funds to enable the applicants to return home, may, if you (I) think proper, be submitted by you (me) to Congress."

The perusal of this part of your said answer, to which my attention has been called, in consequence of the applications stated in the forepart of this communication, has, you will permit me to say, somewhat surprised me, inasmuch as it cannot be within the province of this legation to memorialise the Congress of the United States.

According to established usage in all nations, as is well known, the representatives of foreign governments are accredited to the Executive of the nation of their appointed residence, and all their communications and negotiations are carried on with the different departments of the said Executive power; and, in some countries, exclusively through that charged with the management of their foreign relations; and if questions should arise, which cannot be settled according to the instructions of the respective nation, without recourse to, or consent of other branches of its government, it behooves the Executive power of that government, as universally ac-

knowledge and practised, and not the foreign representative, to proceed as the case may require, in order to satisfy the demand, if it be deemed just.

But, to return to the main question: allow me to observe, that because the case of the 'Susan' may be before the courts of the country, this circumstance in no wise can invalidate—which you do not state, it is true—the claims of the Portuguese subjects for the value of their cargo, the loss thereon, and the damages arising from its seizure, on the one hand, and of the wrongs inflicted and damages sustained by the passengers, on the other, of whose complete innocence of any criminal proceedings which may attach to the "Susan" or its officers, no further proof is necessary than the fact of their full discharge by order of the court.

Under all the circumstances of the case, as now related and heretofore represented, together with the solemn protest of the parties, both at Rio de Janeiro, as respects the skippers there established, and in this city, of those who were compelled by the captors to accompany their prize, I cannot but trust that you will see fit to cause such instructions to be forwarded to the proper quarter, so that the Portuguese property embarked in the cargo of the brig "Susan" be delivered, with all satisfactory compensation for damages in the premises, to its respective owners or their representatives.

I further beg leave to enclose a statement taken from the original accounts in the possession of the Portuguese consul-general, attorney for the parties who respectively signed and presented them, in order that these claims, together with pecuniary redress for their sufferings and imprisonment, may be satisfied by the federal government as justice appears to demand.

I seize this opportunity to renew to you, sir, the assurances of my most distinguished consideration.

DE FIGANIERE E MORAO.

To the HON. JOHN M. CLAYTON,
Secretary of State of the United States.

—
No. 27 WALL STREET, NEW YORK,
May 28, 1850.

SIR: Allow me very respectfully to call your attention again to the damages which my constituents, Amâral & Bastos, Bento dos Santos, Alexandre da Cruz, Manuel A. T. Barboza and Luiz Vidal Cêzar, subjects of the Queen of Portugal, sustained at the hands of the government of the United States, by the unauthorized and unjustifiable capture of the cargo belonging to those gentlemen on the American brig Susan off the coast of Brazil, by the United States brig Perry. You are well acquainted with the character and extent of those damages, too extended in their character to be embraced within this communication, and I have therefore only to request your good offices in bringing the matter officially before the notice of the proper officers of the United States government. But should you require, for their satisfaction or your own, a more detailed statement than that with which you have already been furnished, it will afford me great pleasure to furnish the same. Awaiting, therefore, the result of your representations in our behalf, I have the honor to remain your excellency's most obedient servant,

THOMAS C. F. BUCKLEY,
Proctor for Amâral & Bastos, and others.

Statement of the accounts deposited in this consulate general by sundry of the Portuguese passengers of the brig "Susan," captured off Rio de Janeiro and brought into this port by the United States brig Perry.

<i>Account of Alexandre José da Cruz.</i>		
Passage paid from Rio to Benguella for himself and two brothers, at \$150.....	\$450 00	
Expenses while in New York during 40 days.....	100 00	
Passage from New York to Rio	100 00	
Salary of a clerk having charge of his house in Benguella during his absence.....	800 00	
Amount of invoice of his part of cargo on board the brig Susan.	3,294 58	
Profits on said invoice	2,635 66	
		\$7,380 24
<i>Account of Luis Vidal Cézar.</i>		
Amount of invoice of his part of cargo shipped on board brig Susan.....	2,445 00	
Profits on said invoice	1,956 00	
Passage paid from Rio to Benguella for himself and three sons, at \$150.....	600 00	
Salary of a clerk having charge of his house at Benguella during his absence.....	1,000 00	
Expenses while in New York.....	200 00	
Passage paid from New York to Benguella	200 00	
		6,401 00
<i>Account of Ignacio Antonio la Motta Vilira.</i>		
Passage paid from Rio to Benguella	150 00	
Passage paid from New York to Benguella.....	200 00	
Loss and injury to his business, caused by his absence.....	4,000 00	
		4,350 00
<i>Account of Bento Pacheco dos Santos.</i>		
Passage paid for himself and clerk from Rio de Janeiro to Benguella	300 00	
Passage paid from New York to Benguella.....	150 00	
Salary paid to his clerk	90 00	
Expenses while in New York	600 00	
		1,140 00
<i>Account of Constantino Antonio Montuno Ozoria.</i>		
Passage paid from Rio to Benguella	150 00	
Passage paid from New York to Benguella	100 00	
Loss of salary during 7 months.....	700 00	
Expenses while in New York	160 00	
		1,110 00
<i>Account of José Joaquim da Silva.</i>		
Passage paid from Rio to Benguella	150 00	
Passage paid from New York to Benguella.....	150 00	
Expenses while in New York	600 00	
		900 00
<i>Account of Catharina, a free colored woman.</i>		
Passage paid from Rio to Benguella	150 00	
Passage paid from New York to Benguella	150 00	
Expenses while in New York	200 00	
Five months' wages	25 00	
Indemnity for the time she was confined in prison at New York	200 00	
		720 00

STATEMENT—Continued.

<i>Account of Isabel, a free colored woman.</i>		
Passage paid from Rio to Benguella	150 00	
Passage paid from New York to Benguella	150 00	
Expenses while at New York	200 00	
Indemnity for the time she was confined in prison at New York	200 00	
		700 00
Total		22,701 24

The above are extracts from the original accounts in the archives of this consulate general, not including in their respective amounts pecuniary redress and indemnity for seizure, treatment and imprisonment.

CONSULATE GENERAL OF PORTUGAL,
New York, May 25, 1850.

No. 24.

F. C. de Figanière é Morão to Mr. Clayton.

HER MOST FAITHFUL MAJESTY'S LEGATION,
Washington, June 6, 1850.

The Portuguese minister, undersigned, has had the honor to receive the note which, under date 30th ultimo, the Honorable John M. Clayton, Secretary of State of the United States addressed to him in answer to his communication of the 25th of the same month, in which the undersigned, by order of his government, again presented to the American government certain claims which had heretofore been matters of discussion between the two governments.

In this answer Mr. Clayton expresses his surprise at the re-appearance of these *obsolete* reclamations; can hardly credit that Portugal *seriously* cherishes any *intention* to revive them; adds, that *he declines* re-opening the discussion, and concludes by stating that he has neither *leisure* nor *inclination* to dwell upon the *reasons* which may have impelled Portugal to the *extraordinary course* she has adopted in resuscitating *unfounded pretensions*.

The undersigned cannot but regret some passages in the communication he has received, but he concludes himself justified in supposing that the honorable Secretary of State did not, in any of his remarks, mean to convey anything which could reflect upon the honorable motives and friendly intentions of her Majesty's government, in placing before the American government claims which it really believes to be well founded.

It is true that these claims are of long standing; but the Portuguese minister may remind the honorable Secretary of State that they are, notwithstanding, of a more recent date than one of the American claims, to which his government has given a most attentive investigation.

The undersigned will, however, abstain from going further into this argu-

ment or from making any lengthened reply to Mr. Clayton's note, having referred the same to her Majesty's government.

But he cannot omit to notice the part of the honorable Secretary's said note which would call in question the accuracy of the undersigned's assertion, viz: that the United States government at one time had considered in a favorable light the proposition to submit the Portuguese claims in question to commissioners to be appointed by both governments: and he begs to state that the grounds for his making this assertion are to be found in a despatch of his honorable predecessor, the Chevalier Corrêa de Serra, addressed to his government, which the undersigned is bound to presume is correct.

Her most faithful Majesty's government, at all events, wishes for nothing but that which is just and equitable, and has for this reason offered to refer all the claims presented by the United States government against it to the arbitration of a third friendly and independent power; and is also desirous that all claims which it has against the United States should be likewise submitted to the same authority, that all pending matters in controversy between the two nations may at once and forever beset at rest; and, although the undersigned has not failed to remark that Mr. Clayton considers the relations between Portugal and the United States invested at this moment with *critical interest*, he cannot but flatter himself that the termination of all differences between their two countries may be attained in the mode which he has suggested, inasmuch as it is in complete accordance with the fair and peaceful spirit of the present times, and also completely in harmony with the policy which has hitherto always directed and maintained on the most friendly footing, the relations between the two governments.

The minister of Portugal avails himself of this occasion to renew to the honorable Secretary of State of the United States the assurances of his highest consideration.

DE FIGANIERE E MORAO.

To the Hon. JNO. M. CLAYTON,
Secretary of State of the United States.

No. 25.

Mr. Clayton to J. C. de Figanière e Morão.

DEPARTMENT OF STATE,
Washington, June 19, 1850.

SIR: Your note of the 30th May last relative to the case of the slaver brig Susan, in which you present a claim of \$22,701 24, in behalf of the Portuguese passengers captured, as you admit, in that brig, and brought into the port of New York by the United States brig Perry, more than a year ago, was duly received, but owing to a press of other business upon this department I have not been able to pay any attention to it until to-day.

On the 8th day of May, 1849, your legation was officially informed by this department of the facts attending the capture of this piratical vessel—"an American-built brig, with a crew of Portuguese and Brazilians," who, from the evidence against them, did not appear to merit the interposition of

a government so enlightened and so devoted to the principles of Christianity as that of her most faithful Majesty.

The following statement given by the commander of the Perry, together with the other papers officially communicated to your legation on the 8th day of May, 1849, brought fully to your knowledge the character of the vessel bearing the men for whom you have interceded:

"The vessel was bound directly to the slave coast of Africa, with a cargo consisting of spirits, farina, rice, beans, trinkets, made clothing, one or two spare cooking apparatus, and a barrel of iron-ware, translated by one of the passengers to be iron and chains. Her crew consisted of a captain, two mates and nine men. Of the latter only two were citizens of the United States, and one of these, a negro named Turner, does not appear on the consular certificate. She carried twenty-one passengers, without any register of them, or any one on board knowing how many there were, or what their character, whether free or slaves. Two of these passengers (Brazilian or Portuguese) were furnished each with a set of nautical instruments, books and charts of the slave-coast of Africa and the coast of Brazil; these instrments, charts, &c., being stowed away in their baggage.

"A third passenger had about three thousand dollars in gold, with numerous letters directed to places upon the slave-coast. Several of the passengers were shippers and consignees of parts of the cargo, and two were negro slaves. One, whose passport was not presented when demanded, and whose name and presence on board was only ascertained by stratagem, afterwards acknowledged that his name was *José Pereira de Fonseca*. His name does not appear in any list that was obtained, neither in the list of passengers as published in the newspapers of Rio de Janeiro, and was probably purposely suppressed. All the passengers were Portuguese or Brazilians.

"The captain stated that after signing the charter-party on the 15th of December, 1848, he had offered five hundred dollars to cancel the agreement before any cargo had been shipped, which offer had been rejected. The consul's letter, of which you have a copy, also furnished ground for suspicion.

"In view of these circumstances, and others less prominent and less to be relied upon, the American brig *Susan* has been captured and sent to the port of New York, under the command of Lieutenant Thomas F. Hunter. The impossibility of sending with safety forty-nine persons on to one coast, in an inclement season, and in a vessel filled to excess with cargo, forced me to yield to the necessity of taking some of the passengers on shore. Accordingly the miners, and those of the least apparent importance, to the number of eight, were, with their baggage, transferred to this ship and from thence were sent on shore.

"Enclosed you are furnished with copies of the ship's manifest, charter-party, consular certificate, and all the orders and letters regarding the capture. The public mail, under the government seal of Brazil, was taken from on board the *Susan* and sent to the post office again. I am recently informed by the consul that abundant evidence can be produced as to the slave-dealing character of the chartering party and some of the passengers of the *Susan*, which fact it is the consul's intention to lay before the authorities at home, in a letter to the district attorney for the eastern district of New York."

On this information, without presenting the slightest evidence to excul-

pate these passengers, and while the vessel is still on trial before the judiciary of the United States, the proctor for and in behalf of these "Portuguese subjects" writes you a letter on the 25th of May last, claiming the sum I have mentioned; and you immediately forward this demand for the Portuguese property in the cargo of the slaver, with damages for the detention of the passengers, which you ask "may be satisfied by the federal government, as justice appears to demand."

The proctor De la Figanière, your son, who was left in charge of the legation when you returned to Portugal fourteen months ago, and who received my note of the 8th May, last year, in reply to his own of the 27th April previous, now suddenly, when you are apprized that the President is about to submit to Congress the American claims on Portugal, presents to you the claims of these slaves for detention, and within five days after you receive this letter you transmit it to this department with all the formality of a regular demand. You do not assert in your note that you had any instructions or authority from your government to present such a claim, but I am bound to presume that you had. In your note of the 30th ultimo you quote a passage from mine of the 8th day of May, 1849, in which I stated that the questions (then presented by your son, the chargé d'affaires of Portugal in your absence) of redress and indemnity, and of supplying the funds to enable the applicants (the Portuguese passengers) to return home, "may, if you think proper, be submitted by you to Congress." You then express your surprise that I should have thus referred you to the Congress of the United States if you thought proper to go there with such demands. This you now regard as very exceptionable, and you are surprised by intelligence which your legation had received more than a year ago. The surprise is now occasioned by your finding that I did not propose, on the 8th May, 1849, to send to Congress such a claim as that you have presented, but preferred that the minister of Portugal should, if he desired, himself assume the responsibility of sending it to that body. As to the mere form of making that communication, you of course understood that this department was ready to be the medium of transmitting it, at your request, however unwilling it might be, to become amenable for your act.

It is possible that this vessel may yet escape justice for want of the testimony of some of the very "passengers" who have been permitted to return to their own country. Many other slavers have escaped in the same way. But the evidence of the guilt of her employers is on the records of this government, and must be disproved before it can regard the "passengers" as worthy of any sympathy or aid.

In conclusion I beg leave to repeat to you the assurance contained in my note of the 30th May last, that the just claims of the citizens of this country upon Portugal will lose none of the merit which characterizes them, nor any portion of that protection which this government has determined to extend to the claimants, by the sudden resuscitation of such unfounded pretensions.

I avail myself of this occasion to renew to your Excellency the assurance of my most distinguished consideration.

JOHN M. CLAYTON.

Commander J. C. DE FIGANIERE E MORAO, &c., &c.

No. 26.

*J. C. De Figanière é Morão to Mr. Clayton.*HER MOST FAITHFUL MAJESTY'S LEGATION,
Washington, June 21, 1850.

The undersigned, minister of Portugal, had the honor to receive yesterday the note which the Honorable John M. Clayton, Secretary of State of the United States, was pleased to address to him on the 19th instant, in answer to his application of the 30th ultimo in behalf of the owners of the cargo, and of the passengers on board the American brig Susan, captured off Rio de Janeiro by the United States brig Perry.

Before replying to the part of the said answer which bears exclusively upon the case in question, the undersigned will take occasion to refer to one or two points which require elucidation, that no misconception may engender unnecessary reflections, quite unmerited on the part of the undersigned, and which he always will endeavor to avoid in respect to any thing Mr. Clayton may say in his communications.

In the first place, the undersigned did not think it indispensable to assert in his note, that he had special instructions to present the claim in question. His public character warrants him, he thinks, to address the American government upon any subject of interest or importance, either to her Majesty's government or in relation to her subjects, under his responsibility to that government of which he is the representative. In this particular case, however, the honorable Secretary of State was right in presuming that orders had been received to bring this matter before the American government.

Secondly, he begs to say, that the *proctor* to whom the undersigned referred in his note of the 30th ultimo, is not his relative; he is an American citizen—a lawyer of New York—as might easily have been seen by the document accompanying the said note.

The undersigned's son, the Consul-general of Portugal, who represents some of the parties, passengers of the Susan, and who furnished the other documents presented with the said note, was not left in charge of the legation during the minister's absence; he could not, consequently, have had the honor to address himself to Mr. Clayton, a mistake, however, of no consequence, and arising from the fact that it was the brother of the said consul, the attaché of the legation, who was authorized to address the American government, and who penned the two communications of the 27th of April and 5th of May, 1849, on the subject of the Susan, and to which misapprehensions the undersigned merely alludes in order to show that there can be no real foundation for the conclusion Mr. Clayton would draw in respect to the presentation of this claim at this time.

On the undersigned's return to the United States, being informed that the case of the Susan was still undisposed of by the court, he did not consider it essential to take any immediate step, and only did so on receipt of instructions to that effect.

It was then only that the documents and correspondence in relation to it came under his examination, from which fact Mr. Clayton will easily perceive that the minister of Portugal could not before have alluded to the passage quoted by him of the honorable Secretary of State's note of the 8th of May; nor could it be expected he should have inferred any other

implied meaning, than such as the words expressed in that passage clearly appeared to him to convey.

The information to which Mr. Clayton refers, and was kindly furnished by the Department of State, did not, as he appears to think, form the foundation of this claim; the grounds for it are specified in the aforesaid notes addressed to the honorable Secretary of State, together with the solemn protests made both at New York and Rio de Janeiro, and upon all the circumstances connected with the capture of Portuguese subjects and property, the violent and unnecessary separation of children from their natural protector, their father, who accompanied them on their intended voyage, of brother from brother, &c.

Among the documents furnished by the Department of State the undersigned has in vain sought for one which establishes the fact mentioned by Mr. Clayton, that the Susan was a *piratical* vessel—an American built brig “with a crew of Portuguese and Brazilians.”

Certainly if this be established, her Most Faithful Majesty’s government would not, for a moment, countenance such claims, and as the honorable Secretary of State well supposes, would immediately withdraw its protection from subjects so engaged.

But the undersigned finds, on the contrary, from the papers before him, that the “Susan” was regularly chartered to take a cargo of *lawful* goods to Benguela and Angola, but ports of Portuguese Africa which cannot justly be called “slave coast,” the trade in slaves having many years ago been abolished in *all* the dominions of Portugal; and, however suspicious the cargo, Portuguese property, might have been thought, once landed at its ports of destination, in accordance with the charter-party and the corresponding bills of lading, it would have been within Portuguese territory and jurisdiction.

The crew list, given under the hand and seal of the American consul at Rio Janeiro, does not exhibit the “crew of the Portuguese and Brazilians” alluded to by Mr. Clayton; on it the name of one Portuguese *alone* is found, and not one Brazilian; and though there appear no more than two Americans among the nine men before the mast, this circumstance is accounted for in the said document, as a certificate follows stating, that seven of her original crew, citizens of the United States, were discharged at their own request, with the consent of the said United States consul.

Having no evidence of guilt against these parties, Portuguese subjects, who embarked on board the brig for Portuguese ports, where many of them had their domicil, and furnished with regular passports (similar to the three enclosed, left behind by their original bearers) as was before stated, and having, on the contrary, a clear proof of their entire innocence of any criminal transaction, in the fact of their *full discharge* by the court, after an imprisonment of several days, which was followed by also setting at liberty the two colored women passengers, who proved to be free, and not *slaves*, as the captor would have shown, it is fair to conclude, that not the slightest proof of a *piratical* character could attach to them.

Under these circumstances, how could it be expected that it rested with these parties to give exculpatory evidence, which Mr. Clayton calls for, when none was offered, as is most evident, to implicate them in anything unlawful? All, on the contrary, goes to show that they were the victims of mere suspicion, which does not, however, exempt, but justice and equity require the government of the captor to indemnify for all pecuniary loss

and personal inconvenience they were compelled to suffer in consequence of the said capture.

The honorable Secretary of State not having stated the evidence to which he alludes, in respect to the guilt of the employers of the "Susan" (and which, it would appear, from his apprehension that the vessel may escape condemnation, not to be conclusive) the undersigned cannot determine how it may bear upon the case in question, but, unless it go to invalidate all that has been stated, and to disprove all the documents referred to, the undersigned cannot see that he should be warranted in desisting from a claim of full indemnity to the Portuguese, owners of the cargo, and passengers on board the "Susan;" from the pursuit of which claim he will no more be discouraged, he begs leave to say, by the repeated assurance with which Mr. Clayton concludes his note, than in respect to others, vastly more important, in consequence of the honorable Secretary's first expression of that assurance.

The undersigned minister seizes, with pleasure, this opportunity to have the honor to reiterate to the honorable Secretary of State of the United States, sincere assurances of his highest consideration.

DE FIGANIERE E MORAO.

The Hon. JOHN M. CLAYTON,

Secretary of State of the United States.

No. 27.

Mr. Clayton to J. C. de Figanrière e Morão.

DEPARTMENT OF STATE,

Washington, June 24, 1850.

SIR: I received your note of the 21st instant, from which it appears that you still persist in the prosecution of the claim of the "passengers" of the slaver brig Susan, and from which prosecution you now inform me, for the first time, that you have the instructions of your government. I now wish to know of you distinctly, whether you really desire me to lay that claim before Congress on your responsibility. I shall not hesitate to do so on your authority, if you desire it.

You admit, that your son, the consul-general of Portugal, "represents some of the parties, passengers of the Susan," also, that he "furnished the document presented," with the note of the lawyer of New York, who describes himself as proctor for Amiral & Barton, and others, subjects of the Queen of Portugal. It is immaterial whether the son who presented the document was the son who had charge of the legation; whether he was consul-general of Portugal and "representing the claimants," or chargé d'affaires of Portugal in your absence. It is quite certain, that your legation, (no matter which of your sons had charge of it,) had full knowledge from the papers communicated from this department, of the character of the slaver brig, for the detention of whose "passengers" you have claimed damages from this government. And the distinction between a proctor of the claimants, and one representing them in the prosecution of the claims, is not perceived to be very important.

The evidence of the entire innocence of any criminal transaction on the

part of these Portuguese subjects, you conceive, is to be found in the fact of their discharge by the court. This you consider "clear proof" of their entire innocence. Do you really think, on reflection, that the discharge by an American court, of a Portuguese subject, taken out of the jurisdiction of the United States, and amenable to the laws of another country for his piratical voyage, is clear proof of his entire innocence?

You inform me that the crew list exhibits the name of but one Portuguese, and that, by a certificate, it appears that but seven of the original crew of the *Susan* were citizens of the United States, discharged by the American consul. If you have adduced the fact that seven of the original crew were Americans, for the purpose of exculpating the "passengers," I have only to say that I had supposed you were apprised that the usual course of the slave-trade in Brazil has been, for the slaver to take out an original crew of Americans to Cabinda, there to discharge the crew, upon which the vessel is sent back with a cargo of slaves, navigated by "passengers" of the same description with those for whom you have taken so deep an interest.

It is not a matter for my consideration whether you are, or are not discouraged in the pursuit of the claims you have presented, and in reference to which you have had my opinion. It concerns you alone now to decide whether, upon your responsibility, I shall lay these claims before the Congress of the United States.

I avail myself of this occasion, to renew to you the assurance of my most distinguished consideration.

J. M. CLAYTON.

The Commander J. C. DE FIGANIERE E MORAO, &c., &c.

No. 28.

J. C. De Figanhière é Morão to Mr. Clayton.

HER MOST FAITHFUL MAJESTY'S LEGATION,
Washington, June 27, 1850.

The Portuguese minister, undersigned, acknowledges the receipt of the communication which the Honorable John M. Clayton, Secretary of State of the United States, did him the honor to address to him under date of the 24th instant, on the subject of the claim of Portuguese property and Portuguese passengers on board the captured brig "*Susan*."

The undersigned being most desirous, both from inclination and by express injunction of his government to preserve, unalterable, the most complete harmony and friendly feeling between the two governments and people, of which his government as well as himself have given manifest proof, will limit his observations, with Mr. Clayton's permission, in the course of his correspondence with the Honorable Secretary of State, to that alone which may be required to elucidate questions under consideration.

The minister of Portugal will therefore answer, first, the question the Honorable Secretary propounds, whether he really thinks that the discharge by an American court of a Portuguese subject, taken out of the jurisdiction of the United States, and amenable to the laws of another country for his piratical voyage, is clear proof of his entire innocence? Admitting the

qualification here given to the Portuguese for the sake of argument, he can but say, that he does not perceive that the question is pertinent to the case under consideration; as the vessel was American, navigating the open sea, it was subject to American laws, as the United States have contended.

The undersigned did not pretend to inform the Honorable Secretary of State of the contents of the crew list of the "Susan," with which Mr. Clayton undoubtedly was acquainted, as that list was received from the Department of State in order to exculpate the Portuguese passengers, for he had before stated their case did not require it; but to show that the crew of the "Susan" did not consist of "Portuguese and Brazilians," as had been stated, to prove the guilt of the said Portuguese passengers in the unlawfulness of the "Susan's" voyage, if such it proves to have been.

With reference to the first and last paragraphs of the note to which the undersigned has the honor to reply, wherein Mr. Clayton offers to lay the claims of these parties before the Congress of the United States, with the authority and under the responsibility of the minister of Portugal, the undersigned begs to say that he has already had occasion to state, that in his public character he can alone hold official intercourse with the executive of this government; that he thinks he cannot, either directly or indirectly, apply in that character to any other branch of the government. He will not, therefore, take the liberty to suggest any mode or channel through which the matter ought to progress; all he at present contends for is the justice of the claim, and as this appears to be contested by the Honorable Secretary of State, upon the plea that it is unfounded, and that the parties are guilty of a high offence, the undersigned has endeavored to prove the said parties innocent of any crime, as he thinks all the circumstances go to show that the claim is fair and just; and he cannot reconcile to his understanding the contrast this claim offers in respect to the American claim of the brig "Magoun," for which the American government contends Portugal ought to pay, notwithstanding this vessel was proved to be a slaver, and as such was condemned, while it now would deny any indemnification to parties against whom no proof of a similar or other unlawful character has been adduced.

The undersigned avails himself of this opportunity to reiterate to the Honorable John M. Clayton, Secretary of State of the United States, the protests of his very distinguished consideration and esteem.

DE FIGANIERE E MORAQ.

Honorable J. M. CLAYTON, &c., &c.

No. 29.

J. C. de Figanière é Moraô to Mr. Webster.

HER MOST FAITHFUL MAJESTY'S LEGATION,
New York, November 7, 1850.

The undersigned, of her Majesty's council and minister resident of Portugal in the United States of America, has been instructed by his government to lay before the Honorable Daniel Webster, Secretary of State of the said United States, the following statement in support of the claims of Portuguese subjects against the American government, arising from cap-

tures of Portuguese vessels with their cargoes, in the years 1816 down to so late as 1828, by privateers fitted out and equipped in ports of the United States, principally in that of Baltimore, and assuming to sail under the flag of South American insurgent States, especially that of *Artigas*.

Upwards of sixty Portuguese vessels with their cargoes were captured or plundered, and such ships and cargoes were appropriated by the captors to their own use.

The fitting out of these privateers at Baltimore was a matter of public notoriety, and many of the leading citizens there, including the sheriff and postmaster, were summoned before the courts as owners or interested in such privateers.

It is well known that the noted Banda-oriental chief Artigas held no seaport, had no ships, no sailors, and the privateers assuming his unrecognized flag were mostly manned and commanded by citizens of the United States, and in some instances the officers held commissions in the navy of the United States.

The undersigned begs leave to say, and he submits, that it was the duty of the United States government to exercise a reasonable degree of diligence to prevent these proceedings of its citizens, and that, having failed to do so, a just claim exists on the part of the government of Portugal in behalf of its despoiled subjects against the United States, for the amount of the losses sustained by reason thereof.

Mr. De Figanieri would here recall to the Honorable Mr. Webster's attention the state of the negotiations between the two governments on this subject. So early as the year 1816 the Chevalier Corrêa da Serra, his Most Faithful Majesty's plenipotentiary, apprised Mr. James Monroe, the then Secretary of State, of these illegal armaments in Baltimore. In March, 1818, that minister claimed indemnification by the government of the United States, for the losses sustained by Portuguese subjects from the captures made by the said privateers, to which application the Secretary of State, in a note dated the 14th of said March, replied that, "The Executive having used all its power to prevent the arming of vessels in its ports against nations with whom it was at peace, and having put into execution the acts of Congress for keeping neutrality, it could not consider itself obliged to indemnify foreign individuals for losses arising from captures upon which the United States had neither command nor jurisdiction."

The undersigned willingly admits that if the Executive of the United States had used *all its power* to prevent the arming of vessels within its territory, and their sailing from its ports against the commerce of Portugal, no claim could have been set up by or in behalf of Portuguese subjects against the government of the United States, but that the only remedy would have been against the wrong-doers, in the courts of law of the United States. But, in point of fact, the fitting out of these privateers was so notorious, that by due diligence on the part of the government and the officers of the United States, the evil might have been prevented.

The Chevalier Corrêa, in another communication addressed to the Secretary of State, dated July 16, 1820, renewed his application, and proposed that the United States should appoint commissioners, "with full powers to confer and agree with her Majesty's ministers in what reason and justice demand."

In a further letter from that minister to Mr. J. Q. Adams, dated 26th August of the same year, the names of the officers of the navy of the

United States are given, who in October, 1818, embarked and served on board the armed schooner "General Artigas." The said schooner sailed under the so-called Artigan flag, and cruised for many months on the coast of Brazil, capturing several Portuguese vessels, among others the Sociedade Feliz, which was brought to Baltimore.

The names of said officers, as given by Mr. Corrêa, were Lieutenants Peleg and Dunham, of Rhode Island, and midshipman Augustus Swartout, of New York, and Benjamin S. Grimke, of South Carolina.

Mr. Adams, in a letter addressed to the Portuguese minister, dated the 30th of September, 1820, declines the appointment of commissioners as proposed, and intimates that the Portuguese subjects who may have suffered wrongs, have a remedy in the courts of justice, but that "for any acts of the citizens of the United States, *committed out of their jurisdiction and beyond their control*, the government of the United States is not responsible." Mr. Adams adds, that in the war in South America, to which Portugal had for several years been a party, "the government of the United States had neither countenanced nor *permitted* any violation of neutrality by their citizens."

The undersigned, without intending to impute criminal negligence to the government of the United States in this matter, may be permitted to observe, that citizens of the United States were permitted whilst within their jurisdiction and under the control of the government, to fit out armed vessels to go forth from the ports of the United States, filled with American citizens, to prey upon the commerce of Portugal.

Her most faithful Majesty's government and the undersigned will readily admit that the government of the United States did not support or countenance these proceedings, which were in direct violation of the laws of nature, of nations and of these United States; but it is conceived that the American government was, to a certain extent, remiss in not using more efforts in suppressing these expeditions, and that a liability results from that remissness. In April, 1822, Mr. Jozê A. Grehan, chargé d'affaires of Portugal, in a letter to the Secretary of State of that day, requires that commissioners should be "chosen by both governments, for the purpose of arranging the indemnities justly due to Portuguese citizens, for the damages which they have sustained by reason of piracies, supported by the capital and the means of the United States."

To this application the Secretary of State replied, on the 30th of April, 1822, that he could not accede to the appointment of commissioners for the purpose stated, and says: "It is a principle well known and understood, that no nation is responsible to another for the acts of its citizens, committed without its jurisdiction, and out of the reach of its control."

Mr. Webster will not fail to perceive, that the complaint is really grounded upon the acts of American citizens, committed within the jurisdiction of the United States, and within the reach of the control of their government; that is to say, the fitting out of armaments within the ports of the United States, to despoil Portuguese commerce.

This subject has, since the above date, been repeatedly renewed verbally, if not in the correspondence of Messrs. T. S. Constancio, J. Banozo Perura, and Torlades d'Azambuja, down to 1835; and upon the renewal of the old claims of the United States against Portugal, both the undersigned and his government have repeatedly adverted to these long standing and vastly more important counter claims.

The law of nations on this subject does not appear to be at all doubtful. It is laid down by Vattel (b. 2, ch. 5, sec. 72-77,) that "the nation, or the sovereign ought not to suffer the citizens to do an injury to the subjects of another State, much less to offend that State itself, and this not only because no sovereign ought to permit those who are under his command to violate the precepts of the law of nature, which forbids all injuries, but also because nations ought mutually to respect each other, to abstain from all offence, from all injury, from all wrong, in a word from every thing that may be of prejudice to others. If a sovereign, who might keep his subjects within the rules of justice and peace, suffers them to injure a foreign nation, either in its body or its members, he does no less injury to that nation, than if he injured it himself. In short, the safety of the State and that of human society requires this attention from every sovereign: if you let loose the reins of your subjects against foreign nations, these will behave in the same manner to you, and instead of the friendly intercourse, which nature has established between all men, we shall see nothing but one vast and dreadful scene of plunder between nation and nation."

It appears to the undersigned, that the only question to be examined is, whether the government of the United States could, by the exercise of a reasonable degree of diligence, have prevented its citizens from going out of its ports in armed vessels to cruise against the commerce of Portugal, a friendly nation with which the United States had ever been at peace, and had uninterrupted commercial relations.

The law of nations, as understood in modern times, is laid down with accuracy in the report (No. 290,) of the 10th of January, 1818, of the Committee of Foreign Relations, fifteenth Congress, first session:

"It is a matter of public notoriety," it says, "that two of the persons who have held successively the command at Amelia island, whether authorized themselves by the government or not, have issued commissions for privateers, as in the name of the Venezuelan and Mexican governments, to vessels fitted out in the ports of the United States, and chiefly manned and officered by our own countrymen, for the purpose of capturing the property of nations with which the United States are at peace; the immediate tendency of *suffering* such armaments, in defiance of our laws would have been to embroil the United States with all nations whose commerce with our country was suffering under these depredations, and if *not checked by all means in the power of the government, would have authorized* claims from the subjects of foreign governments for indemnification at the expense of this nation, *for captures by our people in vessels fitted out in our ports*, and, as could not fail to be alleged, countenanced by the very neglect of the necessary means of suppressing them." (American State Papers, volume iv, page 133.)

The undersigned respectfully states, that the captures in question were made by American citizens, in vessels fitted out in ports of the United States, and that the fitting out of these vessels, he verily believes, was "*not checked by all the means in the power of the government,*" but that there was a "neglect of the necessary means of suppressing" those expeditions.

The public notoriety of these expeditions is easily shown. A reference to "Niles's Register," and other organs of public information published in those times, will suffice for this purpose; and nothing was more generally known at Baltimore, than that these expeditions were commonly fitted out at that port. Indeed, privateers were not only equipped in Baltimore, but they were accustomed to bring their captures there for sale. The govern-

ment of the United States might, by the exercise of due diligence, have become acquainted with the facts, and prevented the privateers from sallying forth.

The chief Artigas did not possess a single seaport, as has been stated, and the so-called privateers gave no security that they would conduct their cruises according to the laws and usages of war, and bring in their prizes for adjudication. They were rather pirates than privateers, and it is respectfully submitted, the government of the United States should have exerted itself so as efficiently to prevent their *repeated* and *long continued* depredations. There were a large number of these so-called privateers, at least twenty-eight or thirty, preying upon the commerce of Portugal.

The authorities of the State of Maryland were evidently negligent in permitting these warlike preparations in the port of Baltimore, and as no claim can be made by Portugal against that State, all complaints founded upon the negligence of the State authorities must, of course, be made against the government of the United States, and this government is therefore, as the undersigned conceives, liable for that neglect.

As already stated, in some instances the privateers brought their prizes into the ports of the United States, and the cargoes were sold, and upon such cargoes duties were levied and paid as upon a regular importation. The undersigned conceives that justice demands these duties, with interest, should be returned to her Majesty's government for the use of the parties interested in such cargoes.

Mr. De Fignière would here beg leave to state, by way of example, the particulars of one of the captures complained of. The ship *Monte Allegre*, measuring over eight hundred tons, with a very valuable cargo of colonial produce, was captured on the 5th June, 1820, on her voyage from Bahia to Lisbon, in the waters of Azores, by the privateer brig *La Fortuna*, under the command of *John Chace*, and taken to Baltimore. Judicial proceedings were instituted in that city against the said captain and owners of the *La Fortuna*, and her prize and cargo were attached. It was proved that the captured property was Portuguese, and that the privateer had been armed and equipped at Baltimore, and had sailed from that port, where her owners and commander, citizens of the United States, resided. It was accordingly adjudged that the capture was unlawful; but, it is clear, that this adjudication does not in any manner affect the cause of complaint against the United States' government, for the want of due diligence on the part of the authorities of the United States, in not preventing the *La Fortuna* (which made many other valuable captures) from being fitted out as aforesaid.

In every instance, the undersigned believes, the claims of the Portuguese subjects presented in the courts of the United States against private individuals, citizens of the United States, who were concerned in such captures, were unavailing; sometimes from the failure of the purchasers of the prizes or cargoes to pay the purchase money, such sales being made by orders of the courts, and credit given to the purchasers under such judicial sales; and often in consequence, as has been represented to the undersigned, of the overwhelming influence of the interested parties, against the foreign claimant.

To use the language of the Committee on Foreign Relations, before referred to: "The subjects of her Majesty are entitled to indemnification at the expense of the United States, if the privateering or piratical expedition in question were not checked by all the means in the power of the American

government." And although the parties injured might also prosecute the wrong-doers, either civilly or criminally, in the courts of the United States, this right by no means interferes with—the undersigned will repeat—or detracts from the claim upon the government of the United States, founded upon the reason before referred to.

Indeed, in almost ever case, the right to sue the wrong doers would be but a merely nominal remedy. It could scarcely ever happen, that either the value of the ship and cargo captured could be recovered from the privateers, and in no case would the losses sustained by the failure of the adventure, and the loss of the liberty of the crews be compensated for.

Mr. De Figanière begs again to submit, in the name of his government, to the Hon. Daniel Webster, the former proposition, as the only proper course which suggests itself to his mind, in order to arrive at a just and equitable conclusion of this long pending matter; that commissioners should be appointed to ascertain what Portuguese ships and cargoes were captured by private armed vessels belonging to ports of the United States, and owned, commanded, and equipped by inhabitants of the said States, and the value of such ships and cargoes, and the damage sustained by reason of such captures; and that the amount thereof be paid by the government of the United States to the government of Portugal, for the relief of the parties injured.

It is further submitted, that the only questions to be left for the decision of the commissioners, should be the questions of fact just adverted to. The correctness of the general proposition laid down by the Committee on Foreign Relations, in reference to the liability of the United States, for its neglect of the necessary means of checking privateering or piratical expeditions, will, it is conceived, be readily conceded by the government of the present day.

The only question, then, remaining for determination is, whether the privateering expeditions from the port of Baltimore and other ports of the United States, might not have been prevented by either the State or federal authorities, if that diligence which the nature of the case demanded had been used.

It appears to the undersigned, that the question can admit of but one answer, and that in favor of the claims in question.

A list of some of the captures made by American privateers, sailing under the so-called Artigan, and other South American insurgent flags, is presented herewith. The value of the ships and cargoes amount, the undersigned computes, to near two millions of dollars, not including damages and interest.

The necessary evidence in support of the claims will be furnished to the aforesaid commissioners, who may be appointed to examine the testimony, if the principle for which the undersigned contends be admitted, as he trusts it will be, by the government of the United States.

The undersigned, minister of Portugal, avails himself of this opportunity, again to offer to the Hon. Daniel Webster, Secretary of State of the United States, assurances of his most distinguished consideration.

DE FIGANIERE E MORAO.

HON. DANIEL WEBSTER,
Secretary of State.

A list of the Portuguese vessels which, with their cargoes, were either wholly captured or partly plundered by American vessels, mostly under the flag of Artigas, between the years 1816 and 1828, extracted from the authenticated documents, &c., in the archives of the Portuguese legation in Washington, the collective amount of loss arising therefrom, exceeding fifteen hundred thousand dollars principal.

Ship—Sam Jodó Baptista.

- “ Margeres de Pombal.
- “ Paquete de Porto.
- “ Ceres.
- “ Raniha dos Anjos.
- “ Sam Jodó Protector.
- “ Monte Allegre.
- “ Lord Wellington.
- “ Maria de Lisbôa.
- “ Luiza.
- “ Don Pedro d’Alcantra.
- “ Ninfã de Lisbôa.
- “ Rainha dos Mares.
- “ Carlotta.
- “ Don Miguel Forjaz.
- “ Santa Maria Vincedora.
- “ Conde de Cavalluros.
- “ Sociedadã Feliz.
- “ Logó-ehô-dirie.
- “ Perola.
- “ Prineeza Carlota.
- “ Jardinura.
- “ Don Jodo VI.
- “ Trumfo d’America.
- “ Almeraute Pacheco.
- “ Principe Real.
- “ Gram-Para.
- “ Carolina.
- “ Unias de America.

Brig—Serpuete.

- “ Kalmuca.
- “ Thalia.
- “ General Sapio.
- “ Globe.
- “ Senhora de Carmo.
- “ Silveira.
- “ Avizo do Douro.
- “ Pombinha.
- “ Tress Coracoens.
- “ Sam Jodó Augusto.
- “ Neva Aurora.
- “ Sam Francisco d’Assis.
- “ Vasco da Gama.
- “ Volemtario.
- “ Don Sebastian, (government packet.)

Brig—Bôa Esperanza.
 “ Amante Feliz.
 “ Paquete Castro-Marim.
 “ Fenix.
 “ Uniao.
 “ Senhora de Alivio.
 Schooner—Feliz Victoria.
 “ Flor de Santa Catherina.
 “ Nossa Senhora da Piedada Almas.
 “ Flora.
 “ Flôr de Rio da Prata.
 “ Luritamia Felix.
 “ Aquia de Leina.
 “ Flôr de Murta.
 “ Medêa.
 “ Montevideô.

No. 30.

Mr. De Figanière to Mr. Webster.

HER MOST FAITHFUL MAJESTY'S LEGATION,

New York, November 16, 1850.

SIR: Permit me to call your attention to the claims of the Portuguese subjects, owners of the cargo of the American brig Susan, and of the Portuguese passengers on board that vessel, which was seized within the maritime jurisdiction of the Brazilian empire, on her voyage from Rio de Janeiro to the Portuguese port of Benguella, by the United States brig Perry, on the 5th of February, 1849.

This claim has been matter of correspondence between this legation and the Department of State, since the arrival in this country, in April of said year, of the above mentioned brig. Many of the claimants, passengers, on being deprived of their small adventures in that voyage, were reduced to great necessity, and are consequently anxiously awaiting to be relieved, as well as the shippers of the bulk of the cargo which was seized with the brig.

The last communication upon this subject, addressed to your predecessor, was dated the 27th June of the present year, and which communication has remained unanswered.

I should wish to signify to these parties that their several claims have been admitted, and that they may expect a speedy adjustment of the same, should the American government have come to that conclusion, and you would be pleased so to inform me.

I have the honor, availing of this occasion, to renew to you, sir, assurances of my highest consideration.

DE FIGANIERE E MORAO.

HON. DANIEL WEBSTER,

Secretary of State of the United States.

No. 31.

*Mr. Webster to Mr. De Figanière.*DEPARTMENT OF STATE,
Washington, January 8, 1851.

The undersigned, Secretary of State, takes the earliest moment he has been able to command to acknowledge the receipt of the note which Mr. De Figanière addressed to him on the 16th November last, inviting attention to the case of the Portuguese passengers and owners of the cargo of the American brig "Susan," which has formed the subject of a correspondence between Mr. De Figanière and the immediate predecessor of the undersigned.

Mr. De Figanière proceeds upon the wrong assumption that the Department of State is the tribunal to decide on the merits of these claims, notwithstanding the fact, that in his notes of the 19th and 24th of June last, Mr. Clayton apprised him of the contrary, and offered at the same time to submit them to Congress upon Mr. De Figanière's own responsibility and special request. But the undersigned is of opinion, that whilst legal proceedings against the "Susan" and her officers and crew, for having been engaged in the slave-trade, when captured by the United States brig "Perry," are still going on before the courts in New York it would be premature, even if Mr. De Figanière should desire it, to communicate the matter to that body. For if it be judicially determined that there was sufficient cause for the capture, no foundation whatever will remain on which the parties can rest any claim for indemnification from this government.

Under these circumstances the undersigned is not able, in reply to the note before him, and that to his predecessor of the 27th June last, to give to Mr. De Figanière any assurances that will satisfy what appears to be his expectation, and especially such as would enable him to signify to the parties that this claim has been admitted by this government.

The undersigned renews to the commander J. C. de Figanière é Morão, the assurances of his high consideration.

DANL. WEBSTER.

The Commander J. C. DE FIGANIERE E MORAO, &c., &c.,
Washington, D. C.

No. 32.

*Mr. De Figanière to Mr. Webster.*HER MOST FAITHFUL MAJESTY'S LEGATION,
Washington, February 4, 1851.

The undersigned, minister resident of Portugal, acknowledges the receipt of the note the honorable Daniel Webster, Secretary of State of the United States, did him the honor to address to him under date of the 8th ultimo, in reply to Mr. De Figanière's communications of 27th June and 16th November, 1850, the last addressed to Mr. Webster, the former to his immediate predecessor, and both in relation to the claims of the owners of the

cargo, and passengers, Portuguese subjects, on board the American brig "Susan," captured by the United States brig "Perry," in February, 1849.

In his reply Mr. Webster appears to view this question in a different light from that of his predecessor, as he says that "the Department of State is not the tribunal to decide on the merits of these claims:" for notwithstanding the reference made, in support, to Mr. Clayton's communications of 19th and 24th of June last, the undersigned takes occasion to say that, on perusing again these two notes, he cannot discover, to his understanding, that it had been so stated to him before.

Indeed, the Portuguese minister does not conceive that he can apply to any other tribunal or department of this government, but to that which is now under the able administration of Mr. Webster, in order to present claims of the nature in question, to show their justice and urge the settlement of them.

That it may, ultimately, be necessary to lay the whole matter before Congress, the undersigned must infer from what was stated in the notes referred to by Mr. Webster; but he cannot conceive that this step should necessarily be made at the special request, or by the authority and under the responsibility of her Most Faithful Majesty's representative near the American government.

If the claims be considered reasonable and just, their adjustment and final payment rest, the undersigned thinks, with the Executive of this government, with whom alone the undersigned can treat.

But Mr. Webster is of opinion that while legal proceedings against the brig Susan are pending before the courts of this country, it would be premature, even if the undersigned were to desire it, to communicate this matter to Congress; "for," adds Mr. Webster in the note to which this is a reply, "if it be judicially determined that there was sufficient cause for the capture, no foundation whatever will remain on which the parties can rest any claim for indemnification from this government."

The undersigned regrets that upon an attentive reconsideration of the case he cannot arrive at the same conclusion, and he will state the reasons for this dissent.

The commander of an American government vessel on a foreign station undertook to follow in the wake of a merchant vessel regularly chartered, laden and formally cleared at a foreign port, bound to another foreign port, and deliberately captured her when yet within the maritime jurisdiction of that foreign port. This circumstance alone renders the legality of the capture *very questionable*, notwithstanding the fact that the captured vessel was an American brig.

But, leaving this question to the court before which the case is pending, and the determination of which cannot affect the claims under consideration, the undersigned will proceed to state, that in spite of the representations and protests of the Portuguese passengers—who had regular passports for and had paid their passage money to the Portuguese port of Benguela—they were ordered, with the brig, to proceed for the port of New York at the most inclement season of the year, where, after a long and perilous voyage—made still more uncomfortable by the deprivations to which they were subjected by their captors—they arrived on the 24th of April, 1849, and were immediately transferred to prison and the cargo taken charge of by the marshal of the United States for that district.

After days of confinement, and undergoing judicial examinations before

the proper officers, the said passengers were liberated without the slightest imputation of crime attaching to them so far as the undersigned has been informed.

All these circumstances, with their protest and claim for indemnification, were submitted by her Majesty's legation to the Department of State under dates the 27th of April and 5th of May, 1849.

On the return of the undersigned to this country to resume his functions of her most faithful Majesty's representative, he was instructed to recall to the attention of the American government the claims in question; and, in his note of the 30th of May, 1850, in reply to Mr. Clayton's answer of the 8th of May previous, the undersigned made use of the following language: "Because the case of the American brig *Susan* be before the courts, this circumstance in no wise can invalidate the claims of the Portuguese subjects for the value of their cargo and the loss thereon arising from its seizure on the one hand, and for the wrongs and the damages sustained by the passengers on the other, of whose complete innocence of any criminal proceeding which may attach to the *Susan* or its officers no further proof is necessary than the fact of their full discharge by order of the court;" and Mr. De Figanière sees no reason to alter this opinion subsequently re-expressed in his note of the 21st of June last, in reply to Mr. Clayton's of the 19th of the same month, wherein the *Susan* is qualified as a "piratical vessel."

The Portuguese minister then wrote: "Having no evidence of guilt against these parties, Portuguese subjects, who embarked on board the brig for a Portuguese port where many of them had domicile, and furnished with regular passports; but having on the contrary a clear proof of their entire innocence of any criminal transaction, in the fact of *their full discharge* by the court after an imprisonment of several days, which was followed by also setting at liberty two colored women passengers, who proved to be *free* and not *slaves*, as the captor would have them, it is fair to presume that not the slightest proof of a *piratical* character can attach to them. Under these circumstances how can it be expected that it rested with these parties to give exculpatory evidence, which Mr. Clayton calls for, when none was offered, as is most evident, to implicate them in anything unlawful.

While the immediate predecessor of Mr. Webster was urging upon the Spanish government the immediate liberation of the "Contoy prisoners" (to which Mr. De Figanière alludes as a published official fact) upon the principle of law that intentions cannot be made evidence of guilt, he applied the opposite rule to the Portuguese prisoners, and persisted in considering them guilty notwithstanding their full discharge after repeated examinations by order of the court of the United States; and, asks Clayton in his note of the 24th June last: "Do you really think, on reflection, that the discharge by an American court of a Portuguese subject taken out of the jurisdiction of the United States and amenable to the laws of another country for his piratical voyage, is clear proof of his entire innocence?"

In addition to the reply the undersigned offered to this question in his note of the 27th of the same month, he begs leave to say that, in his opinion, this point can be resolved but in two ways: firstly, if the Portuguese subject be amenable to the United States courts, and be brought within their jurisdiction with an imputation of crime, his discharge by the court should be taken as evidence of innocence in such crime if any exist; and, secondly, if not amenable to such courts, he is also to be held guiltless

to all intents and purposes by the laws of that foreign jurisdiction, and his capture, forcible voyage to the United States and subsequent imprisonment are illegal acts.

In either case the Portuguese shippers and passengers of the *Susan* are entitled, the undersigned contends, to indemnification by this government, without reference to, as being unconnected with the ultimate decision of the court in respect to the American vessel, in which, to all appearance, they had in good faith laden their property and taken passage for a port of their own country.

The American brig *Susan* may be condemned for an infraction of the laws of the country to which the vessel belongs, and her officers and crew punished for such infraction; but it does not necessarily follow that either the foreign shippers, or the foreign passengers on board that vessel, destined from the Brazilian empire to the Portuguese dominions, in lawful trade between these two countries, were inevitably participating in the infraction of a United States law, the existence of which they might never have had the knowledge; and when they were bound to believe their cargo and their persons secure from molestation on board that vessel which had received but a few hours before the capture her regular papers and documents from the consul of the United States in Rio Janeiro.

Viewing the matter in question in the manner he has submitted, the undersigned maintains that the Portuguese claimants are entitled to indemnification from the government for the capture, by a United States naval vessel, of their property and their persons, without reference to the supposed guilt of the American vessel and crew, even if that guilt should be established and the vessel condemned.

The minister of Portugal avails himself of this occasion again to offer to the Honorable Secretary of State of the United States, assurances of his very distinguished consideration.

DE FIGANIERE E MORAO.

Hon. DANIEL WEBSTER,
Secretary of State.