

MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES,

COMMUNICATING

Correspondence between the Legation of the United States and the Government of Chile, relative to the abduction of seamen from the American whale-ship Addison at Valparaiso, and the imprisonment of Wm. N. Stewart, an American citizen, by the authorities of Chile.

MAY 8, 1854.—Read and referred to the Committee on Foreign Relations.

FEBRUARY 21, 1856.—Ordered to be printed.

To the Senate of the United States:

I transmit herewith a report from the Secretary of State, together with the documents therein referred to, in compliance with the resolution of the Senate of the 12th of January last.

FRANKLIN PIERCE.

WASHINGTON, May 5, 1854.

To the President of the United States:

The Secretary of State, to whom was referred the resolution of the Senate of the 12th January last, requesting the President "to communicate to the Senate, if in his judgment not incompatible with the public interest, copies of the correspondence between the legation of the United States and the government of Chile, in relation to the impressment or forcible abduction of four seamen from the United States whale-ship "Addison," in the port of Valparaiso, in October, 1850; and, also, in the case of William N. Stewart, an American citizen, who was imprisoned at Valparaiso, on a charge of murder, and on conviction released by the Chilean authorities," has the honor to lay before the President the documents mentioned in the subjoined lists.

Respectfully submitted:

W. L. MARCY.

DEPARTMENT OF STATE,
Washington, May 5, 1854.

List of Papers in the case of William N. Stewart.

1. Mr. Peyton to Mr. Webster, (extract,) August 28, 1852; enclosures.
2. Same to same, (extract,) September 13, 1852; enclosures.
3. Same to same, (extract,) September 29, 1852.
4. Mr. Conrad to Mr. Peyton, October 12, 1852.
5. Mr. Peyton to Mr. Webster, (extract,) October 12, 1852; enclosures.
6. Same to same, (extract,) October 28, 1852; enclosures.
7. Same to same, (extract,) November 13, 1852.
8. Same to same, (extract,) November 28, 1852; enclosures.
9. Same to Mr. Everett, (extract,) December 13, 1852; enclosures.
10. Same to same, (extract,) December 28, 1852.
11. Same to Mr. Marcy, (extracts,) May 26, 1853; enclosures.

List of Papers in the case of the Addison.

1. Mr. Peyton to Mr. Webster, April 19, 1851; enclosures.
2. Same to same, (extract,) June 21, 1851; enclosures.
3. Mr. Webster to Mr. Peyton, (extract,) July 2, 1851.
4. Mr. Peyton to Mr. Webster, (extract,) July 23, 1851.
5. Same to same, (extract,) August 23, 1851.
6. Same to same, September 24, 1851; enclosures.
7. Same to same, (extract,) March 22, 1852; enclosures.
8. Same to same, (extracts,) April 26, 1852.
9. Same to same, (extract,) May 20, 1852; enclosures.
10. Same to same, June 28, 1852; enclosures.
11. Same to same, (extract,) July 13, 1852; enclosures.
12. Same to same, (extract,) September 13, 1852; enclosures.
13. Same to same, (extract,) September 29, 1852.
14. Same to Mr. Marcy, June 29, 1853; enclosures.

Mr. Peyton to Mr. Webster.

[Extract.]

[No. 40.]

LEGATION OF THE UNITED STATES,
Santiago, Chile, August 28, 1852.

SIR: * * * * * * * * * *

I also enclose the copy of a communication I received by the mail of this morning, from William Duer, esq., United States consul for the port of Valparaiso, relative to the imprisonment of a man named Stewart, a citizen of the United States, in that city, on a charge of

murder, marked Exhibit B. From the facts stated by Mr. Duer, and confirmed by statements which I have received from other sources, if his statement required confirmation, it is manifest that the local judge acted very improperly by refusing to take in writing the testimony of the material witnesses for the accused in the usual, in fact the only mode which is observed in such cases; in consequence of which, these witnesses have departed on their way to California, and the accused is deprived of his most important evidence, which would have established his innocence of the charge beyond all reasonable doubt, by showing that he did not inflict the wound which caused the death, but that the same was inflicted by a person who escaped on board of the vessel; and, even if he had done so, it was in excusable self-defence.

According to the laws of the country and the regular forms of proceeding in criminal cases, it was the duty of the judge to have taken the depositions of these witnesses. He failed in the performance of his duty, violated the laws of the country, and has rendered it impossible that the accused can have a fair trial of his case; and any trial which may take place in the absence of his material testimony will be a mere burlesque, a mere mockery.

As this unfortunate man has been placed in this situation, not in consequence of any fault or laches on his part, but in consequence of the gross and wilful neglect and violation of duty on the part of a judicial officer of this government, what is to be done?

If he is tried, condemned, and executed, as there is but too much reason to fear, without the immediate and decided interference of the United States government at home, it will be perpetrating murder in the name of the law without even observing the ordinary forms of proceeding in the most important stage of the case. * *

I shall lay this case before the government, as I consider it a proper one for the exercise of a small portion of the extraordinary powers with which the President is clothed, and which he is not slow to exercise against his political adversaries. I will attend the trial, if I can ascertain when it will take place, and do everything in my power to save the man's life; but with such a judge (jury trials are unknown in Chile) I have no confidence in my ability to do so, unless it is known that I will be sustained by my government. An idea prevails here that the government will not sustain its diplomatic representative in emergencies, as will the governments of France and England, and hence one great cause of the disregard of American rights and interests, and the manifest deference which is paid to the English and French by this government and people. It is for the government to decide whether any and what steps are proper to be taken for the rescue of this innocent man from an ignominious fate; but I am sure that nothing less than a peremptory demand for his release, sustained by the presence of a vessel of war, will be respected. * *

I remain, with great respect, your obedient servant,

BALIE PEYTON.

Hon. DANIEL WEBSTER,

Secretary of State of the United States, Washington.

B.

VALPARAISO, August 27, 1852.

SIR: I think it my duty to inform you, officially, of recent occurrences in this city which may affect the life or liberty of an American citizen.

The facts, according to the best information I have been able to obtain, are as follows: On Sunday last, the 22d instant, at about 7 o'clock in the evening, an affray took place on the mole between two sailors, the one a Frenchman and the other a Swede, and both belonging to the American ship *Venice*, arrived the day previous from Philadelphia, and bound to San Francisco, with an assorted cargo and passengers. Some Chilean boatmen on the mole interfered in the quarrel, and took the side of the Frenchman; this probably provoked an interference upon the part of others standing by, since it appears, though in what manner or for what cause I have not been able distinctly to understand, that the quarrel very soon became general. At this time one Stewart, a citizen of the United States of America, the second mate of the *Venice*, and two other passengers, were standing by at a short distance, somewhat further from the sea. They were not concerned in the quarrel and had taken no part in it whatever, when suddenly they were assailed by a discharge of brickbats which struck several of them, and some fifteen or more Chilenos rushed furiously upon them, crying "Americanos." The others got out of the way with more or less injury, one of them having a severe wound on the head, but Stewart was knocked down, and a number, ten or fifteen as I am informed, fell upon him confusedly. Up to the time that he was knocked down and covered with persons so that his actions could not be seen, two persons of respectable appearance and demeanor—one being the second mate, and the other one of the passengers of the *Venice*, who were within a few feet and had their eyes upon him—have declared, upon oath before me, that he did not strike and could not have struck the blow. What happened afterwards, and if at all in self-defence, is, so far as they are concerned, a matter of conjecture. It appears, however, that in the course of the affray one man, a Chilean, was mortally wounded by a stab with a knife: he has since died. For this act Stewart, who was also seriously injured, (since he was carried away senseless,) was arrested and placed in prison, where he now is.

On Monday morning, having ascertained that the mate and the two passengers of the *Venice*, before referred to, could give important testimony in favor of Stewart, I called upon the judge of the criminal court at this place, (in company with a German gentleman who was kind enough to act as interpreter,) and stating to him the importance of the testimony, requested that the examinations of these persons might be taken immediately, as the *Venice* was on the eve of sailing.

I could not prevail upon him to do this, or to appoint an earlier day for that purpose than the Wednesday following. On Wednesday, at the hour appointed, having prevailed upon the captain of the *Venice* to delay his departure, I again called upon the judge, taking with me the witnesses, and requested him to take their testimony, which he, a second time, refused to do, saying that he would hear

them on the next day or the day after. I stated to him that before that time the Venice might sail, taking with her the witnesses, and that the accused might thus be deprived of the benefit of their evidence, and in consequence be unjustly convicted; but I was unable to change his determination. He promised, however, that he would, if possible, take the testimony on the next day, and that he would give me notice of the hour. On the next day the witnesses, by my directions, called at my office, and the captain of the Venice at the same time also appeared, and declared that he could no longer delay sailing, and that with the first wind he must leave the port. I then addressed a letter to the judge, not having heard from him in the interval, stating that the Venice was on the point of sailing, and urging him, as a matter affecting the life and liberty of a man, to consent to take the testimony immediately. In the mean time, as a precautionary measure, though I supposed it would have no validity in the court of Chile, I proceeded to take the testimony of these witnesses myself, but necessarily in a hurried manner. Shortly afterwards I received a message from the judge, informing me that the witnesses might repair to his chambers, and that he would examine them. They went accordingly, and one of them was examined, when, as I am informed, for I was not permitted to be present, the judge refused to proceed further, saying that he was tired. It was then about three o'clock, and the examination had occupied not more than one hour. The judge has twice said that he did not care whether the witnesses were examined or not. On the following day, Friday, the Venice sailed, the witnesses not having been able to come on shore. I have here presented to you a bare statement of the facts without comment or suggestion.

What may be the evidence against the prisoner I do not know; but it is my belief, and I think it my duty so to inform you, that by the unjust and inhuman conduct of the judge, his liberty, if not life, is placed in peril. I believe there is no nation within the pale of civilization that denies to a party accused, whether native or foreign, the right to adduce testimony in his favor. There is no mode of determining guilt or innocence but by a trial, and in this case the accused has not been allowed a trial in any just sense of that word. The witnesses against him have been heard, but those in his favor have not been permitted to testify. There were four days in which they might have been heard, and their examination need not have employed more than a few hours. In order that they might be heard, the ship, in which they were, was detained several days in port, and this the judge well knew. Upon two occasions, appointed by himself, he failed to take their testimony. There is no pretence that it might not have been taken legally, properly, and in accordance with usage. The reasons assigned by the judge for omitting his duty are that he was tired, and did not care whether the witnesses were examined or not.

I will further add that information, obtained by me, induces the belief that Stewart is innocent of the crime of which he is accused. The testimony of one of the witnesses, not heard by the judge, would have gone to show that another was, by his own confession, the guilty person. It seems improbable that Stewart, when on the ground,

pressed by the weight of ten or more persons, could have struck the mortal blow ; and it appears certain that he did not do so before. But, if otherwise, I yet believe that the act was a justifiable one, done in self-defence, and when his own life was in peril.

I am, respectfully, your obedient servant,

WILLIAM DUER,
United States Consul.

His Excellency BAILIE PEYTON,
*Envoy Extraordinary and Minister Plenipotentiary
of the United States, at Santiago, Chile.*

D.

VALPARAISO, *August 31, 1852.*

SIR: According to your order, I handed your letter over to M. J. A. Herguenigi, criminal judge of this place, and the same begged me to inform you that he could give no answer to any note which was not written in Spanish ; and, even addressing him this moment, in the before-named way, he could give to you no information about the state of the declarations of the prisoner, W. N. Stewart, committed for murder, nor allow any copies to be taken of the same, as they were always kept secret until the sumario was finished ; this done, any prisoner had the liberty to bring forward his witnesses, &c.

I have the honor to sign, sir, your most obedient servant,
HUGO JENCQUED.

WM. DUER, Esq.,
United States Consul, Present.

P. S.—In respect to the declarations taken by you, and left in the judge's office, the same declares to have torn them to pieces.

Your obedient servant,
HUGO JENCQUED.

E.

VALPARAISO, *August 30, 1852.*

SIR: I have to request of you that I may be furnished with copies of the depositions taken, and that may be taken, in the case of the American Stewart, who is confined on a charge of murder.

My position makes it my duty to take every proper step necessary to protect his rights.

Your omission to take the testimony of the witnesses in his favor, though the ship in which they were passengers was detained three days for that purpose, has deprived him of the opportunity to establish his innocence, and taken from the trial what value it might have as a means of ascertaining the truth.

I have thought it my duty to lay before the American minister at Santiago the facts of the case.

It is hardly necessary to add that I will pay the expense of making copies of the depositions. I do not wish them translated, but in the original.

Will you also do me the favor to return to me the depositions of the mate and passengers of the *Venice*, which were taken by me, and left at your office on Thursday last.

I am, respectfully, your obedient servant,

WILLIAM DUER,

United States Consul.

To the JUDGE of the *Criminal Court, Valparaíso.*

F.

NOTE.—The enclosed despatches were sent to me open by Mr. Peyton for the purpose, and with the request, that I should add to them copies of the depositions taken by me, and referred to in my letter to him. Those depositions were left by me in the office of the judge, in the supposition and with the view that they might aid him in taking the testimony of the witnesses, which I did not doubt that he would do. When I found that that was omitted I sent for them several times, but my messenger was not able to find the judge; and, finally, I addressed to him a letter requesting (among other things) their return. His answer (verbal) was so extraordinary that I requested the gentleman, to whom it was delivered, to communicate it to me in writing. I enclose a copy of it, together with one of my letter to him.

I shall not suffer any question of form, or any incivility to myself personally, or in my official capacity, to prevent me from seeking to obtain justice in every proper mode for my unfortunate countryman. I must say, however, that the whole conduct of the judge, in which there has been no more evidence of justice or humanity than of civility, leaves me, so far as he is concerned, without hope.

In consequence of a want of explicitness in my letter to him, Mr. Peyton has fallen into an error in supposing that the trial was a proceeding yet to take place. It was *on the trial*, and not in any preliminary examination for the purpose of ascertaining whether there were sufficient grounds to put the prisoner on his defence, (which I believe is unknown here,) that I offered the testimony of the mate and passengers of the *Venice*.

In this country there is no jury, grand or petit, no indictment or other formal accusation, no public trial, and no counsel for the prisoner or public prosecution; but the whole proceeding is conducted by the judge, who examines the witnesses separately and in secret, and reports the evidence to a full bench, consisting of three judges, who pass upon the case. I shall write by this mail to Mr. T. Butler King, collector of San Francisco, to request that the examinations of the witnesses on board of the *Venice* may be taken on her arrival at that port and forwarded to me. These will be important in the event that, through the interposition of the minister of the United States, the prisoner shall be reprieved. But it is possible that before their arrival the prisoner may cease to exist.

It will be seen by the letter of Mr. Hugo Jencked that the judge

intimates that the proper time to hear the witnesses for the defence is after those have testified who support the charge. But that this is no insuperable difficulty is evident from the fact that he promised to examine and did commence the examination of the witnesses for the prisoner before closing the testimony on the other side. Besides, there was ample time before the Venice sailed to complete the whole examination.

WILLIAM DUER,
United States Consul.

Mr. Peyton to Mr. Webster.

[Extract.]

[No. 42.]

LEGATION OF THE UNITED STATES,
Santiago, Chile, September 13, 1852.

SIR: I have the honor herewith to enclose for your information a copy of a letter which I addressed to Mr. Varas in relation to the case of William N. Stewart, marked P, and a translation of his reply, marked Q. Also copies of several other papers appertaining to the same case received from William Duer, esq., United States consul for the port of Valparaiso, marked A, B, C, D, E, F, &c. * * *

I remain your very obedient servant,

BALIE PEYTON.

Hon. DANIEL WEBSTER,

Secretary of State of the United States, Washington.

P.

LEGATION OF THE UNITED STATES,
Santiago, Chile, September 5, 1852.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America near the government of Chile, has the honor herewith to enclose, for the consideration of his excellency Señor Don Antonio Varas, minister of state and foreign relations of Chile, copies of certain documents which he has recently received from William Duer, esq., United States consul for the port of Valparaiso, relating to the case of William N. Stewart, a citizen of the United States, now confined as a prisoner at Valparaiso on a charge of murder; which documents are six in number, and marked A, B, C, D, E, F.

From these papers it appears that, on the 22d of August last, an affray took place on the mole in Valparaiso, between a Swede and a Frenchman, both of whom were sailors belonging to the crew of the United States ship Venice; that other persons taking part in the

quarrel, the affray became general ; that the accused, a passenger on said United States ship *Venice*, which had touched in the port of Valparaiso on her voyage from Philadelphia, in the United States, to San Francisco, California, was standing with several other persons on the mole at some distance from where the combatants were engaged, having taken no part whatever in the affray, when he and these other peaceable persons with whom he was standing were suddenly assailed with brickbats and other missiles by a mob of Chilenos ; that the persons assailed were more or less injured by severe blows on their heads, bodies, &c., but they all succeeded in making their escape except the accused, who was knocked down and beaten until he was left insensible. It further appears that, in this unfortunate affray, a citizen of Chile received a wound of which he has since died ; and it is alleged that the accused inflicted the mortal wound.

It would seem that, up to the time when the accused was assailed and knocked down by the mob, who continued to beat him after he was prostrated, he had not struck, stabbed or molested any person ; and it is uncertain, as it is immaterial, whether the mortal blow was given by the accused after he was struck down, or the same was inflicted by some other person ; for, assuming the facts to be as above stated, he had a right, in defence of his own life, to take that of any one or all of his assailants.

This is a law of nature, recognised by the municipal laws of all civilized States. It further appears that these facts might have been established by the testimony of three eye-witnesses, the second mate and two passengers of the *Venice*, and that the United States consul used due diligence, in fact made extraordinary exertions, to induce the criminal judge of Valparaiso, who had cognizance of the case, to take the depositions of these witnesses, or reduce their examinations, under oath, to writing ; but that he neglected and failed to do so, although the captain of the vessel was prevailed on by the consul to remain in port several days after she was ready to sail, he, the consul, having no power or authority to detain the vessel, upon which there were a large number of passengers, without the consent of her master ; and she finally sailed for California, with all the witnesses whose testimony it was desirable to offer in behalf of the accused. When the consul despaired of being able to prevail on the judge to take the depositions of these witnesses, he did so himself ; and shortly thereafter, the judge having intimated a readiness to proceed with their examinations, the consul desired to be present ; and this being refused, he sent to the judge, for his information, and in order that he might be able to examine the witnesses fully, their depositions as taken by himself ; but the deposition of one witness only was taken, the judge declining to proceed with the others on the ground that he was tired, although he was informed that the vessel would sail immediately with the witnesses, as she did : not only so, but the judge tore up and destroyed the examinations of witnesses which the consul had reduced to writing and intrusted to his care for a temporary purpose.

Thus, it appears, the accused has been deprived of his testimony, and, without the means of defence, is left exposed to the malevolence of those persons who, failing to destroy him by violence, may be

tempted to seek his life by perjury ; and that he is placed in this perilous situation without any fault or laches on his part, or on the part of the United States consul, whose duty it was to protect him so far as to endeavor to procure for him a fair and impartial trial, according to the laws and usages of Chile. And it now becomes a question, a grave and serious question, whether the accused shall or shall not be tried and punished in the absence of his testimony, or, in other words, whether he shall be condemned to death and executed without a hearing, which is the same thing.

The undersigned is well aware that this is a case which should have been submitted for the consideration and decision of the judicial tribunals of Chile, upon a full and patient examination of all the testimony, both for and against the accused, whose decision so made would have been promptly acquiesced in by the United States and all their functionaries. But, under present circumstances, it is impossible for the courts of Chile to afford relief to the accused, whether he be innocent or not, as they are bound to decide according to the law as applicable to the evidence before them ; and the undersigned has no other alternative but to solicit, which he now does, with the greatest respect, the interposition of the President of Chile for the relief of the accused, who has been deprived of all means of defence, in the usual mode, by the extraordinary conduct of a judicial officer of this government.

The undersigned would further inquire whether the various applications made by the United States consul to the criminal judge of Valparaiso, with a view to the protection of the accused, may not be granted, and to request that, so far as it is usual and proper, the same shall be conceded to him.

The undersigned avails himself of this opportunity to renew to his excellency assurances of his high regard and distinguished consideration.

BALIE PEYTON.

His Excellency SEÑOR DON ANTONIO VARAS,
Minister of State and Foreign Relations of Chile.

A.

VALPARAISO, *August 31, 1852.*

SIR : I have not been able to comply with your request to transmit to the government of the United States at Washington copies of the examinations taken by me in the case of Stewart, for the reason that those examinations were destroyed by the judge of the criminal court. I send you herewith a copy of a letter addressed by me to that functionary, together with a letter from a German gentleman, transmitting his answer, if it may be so considered.

I suppose it was intended to be repeated to me.

I am, very respectfully, your obedient servant,

WILLIAM DUER.

HON. BAILEY PEYTON,
United States Minister, &c.

[Copies B and C, from Mr. Duer to the judge of the criminal court, and from Mr. Jencqued to Mr. Duer. See Mr. Duer's correspondence with Mr. Peyton, marked E and D.]

D.

UNITED STATES CONSULATE,
Valparaiso, September 3, 1852.

SIR: I have the honor to acknowledge the receipt of your letter of the first instant.

In compliance with your request, I will proceed to state the substance of the testimony of the witnesses examined by me in the case of W. N. Stewart, and whose depositions were, as I am informed, destroyed by the judge of the criminal court of Valparaiso.

To do this it will be necessary to recapitulate a portion of the contents of my letter of August 27, to which I will add a more detailed statement of some facts which in that communication were only referred to generally, for the reason that I then supposed the examinations themselves to be in existence, and intended, as soon as might be, to transmit to you copies of them.

It appeared by the testimony in question that Stewart, the second mate of the *Venice*, and two of the passengers in the same vessel, were, at the commencement of the affray, standing in a group together, separate and apart from the combatants. In consequence of the destruction of my depositions I cannot give you the names of these persons, having no other memoranda. Suddenly fifteen or twenty Chilean boatmen rushed upon these four men, who had not taken any part whatever in the quarrel by word or act, throwing brickbats at them, and crying "Americanos." The mate and passengers escaped with some injuries from their fury, but Stewart was surrounded, knocked down, and some ten or more fell upon him and beat him in great confusion. Up to the time that he was so knocked down it appeared distinctly that he did not strike a blow. It seemed also impossible that he could have done so afterwards. But if he did so, the evidence established a case of justifiable self-defence. The number of men by whom he was pressed, their excitement, and the weapons they employed, showed both the will and ability to kill those against whom their fury was directed. One of the witnesses exhibited to me his head, which had been dressed by a surgeon, and showed the marks of a very severe wound by a brickbat, a little change in the position of which would have rendered it fatal. Another was run through the coat-sleeve and received a slight flesh-wound from a long knife borne by a Chilean, who was described as running about furiously, threatening with his drawn knife all who apparently belonged to the class against whom, for some reason, his anger and that of his companions was directed.

I may state that I have not been able to ascertain what it was that produced this excitement. The two men with whom the quarrel origi-

nated—the one a Swede and the other a Frenchman, belonging to the crew of the Venice—both deserted that vessel, and neither of them to my knowledge has been arrested. It may be that the Swede, against whom the Chilean boatmen took part, and who may have been erroneously supposed to be an American, wounded or injured in some way one of their number, or that one of his companions did so. But this is a matter of conjecture, as I have no evidence upon that subject.

I said in my letter of August 27 that a portion of the testimony taken by me went to show that another was the guilty person. That testimony was as follows: one of the passengers of the Venice deposed that he was on the mole and near the water about fifteen or twenty minutes after the affray was over. He there heard conversing together in English two men, neither of whom he knew. The conversation was in reference to the affray, and tended to show that one of the two was the party who gave the wound which proved fatal to one of the boatmen. It terminated in this way: one of the men said he would go up to the town again. The other remarked, “You had better not; they will recognise you by your dress, and they know that you are the man who struck the blow.” These were nearly or quite the words, and certainly the substance of the words used. The first then replied, “Well, then, I will go on board.”

I may remark that, passing near the mole on the evening in question, shortly after the affray, and observing a group of persons collected there, I went up to see what was the matter, and saw stretched on the ground, and apparently lifeless, the bodies of two men. I supposed these were Stewart and the Chilean who was wounded.

I have been informed to-day that Stewart has admitted, on the examination before the judge, that a knife, said to have been found in the body of the deceased, belonged to him, and was on his person before the affray commenced; and that he further declared that, to the moment he was knocked senseless, he is certain that he struck no one, and that he is entirely unconscious of having done so at all. These declarations are, of course, to be taken together, and that part which is in his favor is not to be separated from that which is against him. It may be that, unconsciously, and by an instinctive movement of self-defence, Stewart availed himself of a weapon by his side. It may be that a friend or companion avenged him with his own knife. But whatever hypothesis we adopt, none can shake the conclusion that, even if deliberately and with his full senses, and with an intention to take life, he used his knife to defend himself against an unprovoked attack made by fifteen or twenty men with brick-bats and knives, he was justified in the act by the laws of God and man, and the practice of all nations, whether barbarous or civilized. I send you herewith a copy of a letter addressed by me yesterday, and delivered to-day, to the judge of the criminal court, which I hope may meet with your approbation.

I am, very respectfully, your obedient servant,

WILLIAM DUER,

United States Consul.

His Excellency Hon. BALIE PEYTON, &c., &c., &c.

E.

VALPARAISO, *September 2, 1852.*

SIR: On the 30th of August I addressed to you a note requesting that I might be furnished with copies of the examinations taken in the case of Stewart, and also that the depositions taken by me and left in your office might be returned to me. I was informed by the gentleman to whom I intrusted the delivery of the note that you refused to answer it, because it was not written in Spanish; that you added, that until the *sumario* was finished, the examinations were required to be kept secret, and that no copies could consequently be furnished, and that, as to the depositions taken by me, you had torn them to pieces.

I shall not suffer any incivility to myself, personally or officially, to divert me from the discharge of my duty in this case.

It is impossible for me to write to you in Spanish, for the reason that I am not sufficiently acquainted with the language. I will, however, whether for your convenience, or to satisfy any claims due to your dignity, which I have been free from any intention to offend, cause to be appended to this letter a translation. I cannot, however, be responsible for the accuracy of that translation, but only for what I write myself.

The accused is my countryman—alone, friendless, without money, imprisoned, his witnesses denied a hearing. If I were deaf to humanity, the office which I hold makes it my duty to take every proper step to protect and defend him.

It is not, and has not been, my wish that, if guilty, he should not suffer the penalty of his crime. The witnesses whom I heard, but whom your did not, and whose evidence is now destroyed, induced in my mind the belief of his innocence.

I beg you, therefore, to believe, if I persist in these efforts, that it is not with the purpose of disrespect to yourself, or of unnecessarily occupying your time, but of discharging a duty to my own government and country.

In the supposition that the examinations may now be completed, I renew the request that I may be furnished with copies of them. If not yet completed, then I request that I may be so furnished when they shall be so completed. I desire to be informed whether the accused will be allowed the benefit of counsel, or of an advocate to plead in his defence.

I desire to know whether the witnesses against him may be confronted with him; whether they may be cross-examined—that is, examined in his behalf by him or his counsel, and whether they may be examined in public. As to witnesses in his favor, I believe there are none now in Chile.

It is my wish, also, to be informed whether there will be any other or further trial than that which is now in progress. To explain this inquiry, it may be proper to state that in the United States of America witnesses are first heard, to determine whether or not there are sufficient grounds to frame an accusation; and if that question be

determined affirmatively, then what is properly termed the trial takes place in public. If the course of proceeding is similar in Chile, it is my wish, and may, perhaps, be that of the American minister, to be present at the trial.

I also wish to know whether I may communicate freely with the accused while in prison, and whether such communication may be in private. And if, for that purpose, any order be requisite, I request to be furnished therewith.

In addition to the foregoing, I shall be glad to receive any other and further information which (in my ignorance of the laws and customs of the country) may enable me to protect and defend the accused.

I am also under the necessity of inquiring whether or not it is true that you tore to pieces the examinations taken by me.

If there is in these inquiries, whether in substance or manner, or as respects the functionary to whom they are addressed, any apparent want of courtesy, departure from form, or other impropriety, I renew the assurance that the same is undesigned on my part, and must be attributed to an imperfect knowledge of the laws and customs of the country.

The necessity of preparing a translation of the foregoing, and of making the necessary copies, may delay its delivery to you beyond the day of its date.

I am, respectfully, your obedient servant,

WILLIAM DUER,
United States Consul.

F.

VALPARAISO, *September 10, 1852.*

MY DEAR SIR: I enclose to you copies of the memorandum of the interview between the judge and my clerk, accompanied by Mr. Ward, and also of the letter from me to that functionary.

I received your letter this morning, enclosing copies of papers. * * I have just returned from a visit to Stewart. His name, by-the-by, is William N. Stewart. Those of the witnesses examined by me are George Flynn, (second mate,) Thomas Moffat, and James Adams.

In haste, very truly,

W. D.

Hon. BALIE PEYTON, *U. S. Minister, &c.*

G.

U. S. CONSULATE,
Valparaiso, September 6, 1852.

SIR: I received a message from you on the afternoon of Saturday last, (the 4th instant,) to the effect that you desired to communicate to me (verbally) information with respect to the case of Stewart.

I have accordingly sent my secretary to receive any information of that character which you may be willing to impart, accompanied by Mr. Alfred Ward, who has had the politeness to offer to act as interpreter.

While I shall be much obliged for any information I may obtain in this way, yet I must not be understood as waiving my request for a written answer to my communication of the 2d instant.

This I desire not as a matter of form, but because I deem it important, both to avoid all misunderstanding and to serve for the information of my government; and I feel the less at liberty to depart from this course because it has the sanction of the minister of the United States at Santiago.

I am, very respectfully, your obedient servant,

WILLIAM DUER,
United States Consul.

J. A. HERGUENIGI, Esq.,
Judge of the Criminal Court of Valparaiso.

H.

U. S. CONSULATE,
Valparaiso, September 9, 1852.

SIR: J. A. Herguenigi, esq., judge of the criminal court of Valparaiso, to whom I delivered your letter of the 6th instant, after the same had been translated to him by Mr. Alfred Ward, replied in substance as follows, namely:

That the examinations of witnesses in all cases were kept secret, until the sumario was concluded and passed from him to Don Juan Dios Baso, agente fiscal, for his decision, when any person was at liberty to see or take copies of them; that those taken in the case of Stewart could now be seen, and copies obtained on application to Don Juan Dios Baso, agente fiscal, before named, to whom they had been referred, and of whom he had requested his decision on that day, (the seventh) at the same time furnishing me with his address, and suggesting Mr. Hugo Jencqued as a proper person to translate them.

That Stewart could be seen and conversed with at any time; that no order was necessary for that purpose, and that he has never been placed *incomunicado*.

That the depositions of the mate and passengers of the ship Venice, taken by yourself, were of no validity in the courts of Chile; that they remained on his desk for two days, with a view of being returned to you, when, among other papers, he destroyed them.

That on the day he examined one of the witnesses in favor of Stewart, at the *juzgado del crimen*, he had waited for, and expected them at the *carcel* in the morning, and that he declined examining more witnesses on that day, for the reason that the usual hours limited for the performance of his duty had expired, and the fatigues of an unusual press of business on that morning induced him to postpone the

examination of the other witnesses until the next day ; that the witnesses failing to appear on the next day, was their neglect, as the vessel in which they were passengers was prevented from sailing, in consequence of a norther, for two days thereafter.

That, for the want of time, he has not been able to make a written reply to your letter of the second instant, but will do so as soon as possible.

That he proposes to call on you, with Mr. Hugo Jencqued as interpreter—not in his official capacity as judge, but privately—for the purpose of giving you any further information necessary for the defence of the accused.

That his object throughout has been to promote the justice of the case, for which purpose he has always been, and is now, ready to facilitate your efforts in the defence of the accused, and will appoint a lawyer, gratis, for that purpose, should you not wish to act, or should the accused, Stewart, be unable to furnish counsel for himself.

I am, very respectfully, your obedient servant,
CHAS. DE RONCERAY.

WILLIAM DUER, Esq.,
United States Consul, Valparaiso.

The foregoing is the substance of the interview alluded to.

ALFRED WARD.

VALPARAISO, *September 9, 1852.*

[Translation—2.]

SANTIAGO, *September 9, 1852.*

SIR : The undersigned, minister of foreign relations, has had the honor to receive the note of the 6th instant of the envoy extraordinary and minister plenipotentiary of the United States, near this government, with which he transmitted a copy of the representation addressed to him by the consul of his nation in Valparaiso, informing his excellency of everything that had occurred on the mole of that port on the 22d of August, in relation to a quarrel between two mariners of the American ship Venice, from which resulted a death, which is attributed to W. N. Stewart, a citizen of the United States.

In view of said note, and for the purpose of determining what is proper, information has been asked from the criminal judge of Valparaiso. The result of this previous proceeding being obtained, the undersigned will make the proper answer to the note of Mr. Peyton.

In the mean time, the undersigned has the honor to renew to his excellency the assurances of his distinguished consideration.

ANTONIO VARAS.

The ENVOY EXTRAORDINARY AND MINISTER
PLENIPOTENTIARY of the *United States of America.*

Mr. Peyton to Mr. Webster.

[Extract.]

[No. 43.]

LEGATION OF THE UNITED STATES,
Santiago, Chile, September 29, 1852.

SIR: The minister of foreign relations has not answered my note relative to the case of William N. Stewart, a copy of which I forwarded with my despatch of the 13th instant, marked No. 41, but which should have been No. 43. By the mail of this morning, however, I received from William Duer, United States consul for Valparaiso, a Spanish transcript of the testimony in the case, all of which is on one side, there being no evidence in behalf of the accused, and the decree of the judge in the first instance.

The testimony of the deceased, and one other witness, if credited, would have been sufficient to convict the accused of murder; but the judge decrees a postponement of the case with a view to obtain further testimony against the prisoner, or some other person on the ground of the insufficiency of the evidence to convict him. I suppose this course has been intimated to him by the government, as the most convenient mode of getting rid of the case. This is mere conjecture, however; and as an appeal lies, as a matter of course, to the supreme court, at Santiago, he may still be condemned by that tribunal. I shall be greatly obliged for your views in this case. * *

I remain, very respectfully, your obedient servant,
BALIE PEYTON.

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

Mr. Conrad to Mr. Peyton.

[No. 20.]

DEPARTMENT OF STATE,
Washington, October 12, 1852.

SIR: Your despatch No. 40, dated August 28, has been received.

As you state that you intended to lay the case of Stewart before the government of Chile, it is hoped that upon your representation of the facts, and particularly of the conduct of the judge, in refusing to hear testimony in his defence, that government will either release him without trial, or, if he shall already have been tried and convicted, will pardon him.

In case, however, your efforts to procure his discharge shall have been unsuccessful, the President directs me to instruct you to lose no time in communicating to the government, that this government disclaims any intention to interfere with the administration of justice in Chile; but that the conduct of the judge, in refusing to hear testimony on behalf of the accused, is considered by it as indicating a predetermination to condemn him, and as unworthy the magistrate

of a civilized and Christian country; that it cannot, for a moment, believe that the conduct of this judge will be sanctioned by the government of Chile, or that it will allow a man who may be innocent to be sacrificed from the refusal of the judge to discharge his duty. If, however, it should be otherwise, and the government of Chile should permit the accused to be deprived of his life or liberty, in virtue of a sentence rendered without hearing the witnesses offered in his defence, and without a fair trial according to the laws and usages of Chile, this government, however anxious it may be to cultivate the most friendly relations with Chile, will consider such conduct a gross outrage to an American citizen, for which it will assuredly hold that of Chile responsible.

These instructions are, of course, based upon the supposition that the information communicated by you that the testimony of the witnesses offered to be examined by the accused could, according to the laws or usage of Chile, be used on the trial.

Supposing that it might aid you in your demand, orders have been sent to Commodore McCauley to have one or more of the vessels of his squadron at Valparaiso.

Proper instructions from the Secretary of the Navy for his guidance have also been given.

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

C. M. CONRAD,
Acting Secretary.

TO BALIE PEYTON, Esq., &c., &c., &c.

Mr. Peyton to Mr. Webster.

[Extract.]

[No. 44.]

LEGATION OF THE UNITED STATES,
Santiago, Chile, October 12, 1852.

SIR: I herewith forward a translation of the reply of the minister of foreign relations to my note in relation to the case of W. N. Stewart, a copy of which note I sent you with my despatch bearing date 13th of September, No. 41, but which should have been No. 42.

You will perceive, by the minister's note, that the fate of this unfortunate man is still uncertain, notwithstanding he has been, in effect, acquitted, and that on an *ex parte* trial, where he had neither counsel nor witnesses.

I have placed a copy of the said note of the minister in the hands of Mr. Duer, United States consul for Valparaiso, with a request that he may reply to the facts, so far as the same conflict with his former report, a copy of which I forward to you, by Lieutenant Daniel F. Dulaney, special bearer of despatches; and as soon as I receive the consul's reply, I shall protest against the punishment of the said Stewart, and insist on his discharge. But, if I am not supported by you, he may languish out his days in prison.

I forwarded with my last despatch, No. 43, under date of the 29th

of September, a translation of the decree* of the court in this case, and supposed that there the matter would have ended, until I subsequently received the note of Mr. Varas. * * * *

I have the honor to be, sir, very respectfully, your obedient servant,
BALIE PEYTON.

Hon. DANIEL WEBSTER,

Secretary of State of the United States, Washington.

[Translation.]

SANTIAGO, *September 30, 1852.*

SIR: Having asked information from the criminal court of Valparaiso, as I had the honor to inform your excellency in my official communication of the 9th instant, concerning the contents of the note of your excellency, of the 5th instant, relative to certain incidents in the prosecution against W. N. Stewart, a citizen of the United States, it appears by the exposition of the judge, that, the summary examination being commenced, it was made known to him, by the consul of the United States, that there were certain Americans whose testimony related to the matter of the pending examination; that he verbally promised the consul that on the following day, at 10 o'clock of the morning, he would proceed to the examination of the witnesses; that they did not appear at the place designated, where he waited for them until 2 o'clock in the evening; that after that time, Don Hugo Henequel came to the court, stated that the consul had sent the witnesses, and exhibited to the judge a paper written in English, it being a rough draught of the declarations of the same persons, which the consul had taken; that the judge refused to receive this paper, because it could have no validity in the cause, but which was, nevertheless, left upon his writing-desk; that afterwards, one of the witnesses was brought in, who was examined, through the medium of an interpreter, and his declaration transcribed in the summary; that it being now late, he informed Don Hugo Henequel that the other witnesses might attend at the office of the jail, where they should be heard; that it was suggested to him by Henequel that, on the same day a vessel, in which the witnesses were to embark, would sail, but that, notwithstanding, he insisted on his first arrangement, on account of its not then being the hour of business; that during the two following days the witnesses did not appear, notwithstanding that the vessel had remained in the bay during those two days, being detained by contrary winds, as he was assured by the same person; and that, upon his afterwards being asked for said draught of writing, (borrador) he replied, verbally, that as it was useless, he had destroyed it, with others of the same class, which incumbered the desk of the court.

According to this account, it does not appear that the judge had refused to receive the declarations of said witnesses, at the proper time;

* To be found in a subsequent despatch from Mr. Peyton to Mr. Webster, under date of October 28th.

rather, on the contrary, it appears that there was not due diligence on their part in offering them.

There is no motive to presume in the judge a prejudice unfavorable to the accused. At all events, the individual to whom is attributed the conduct of which your excellency makes mention, having turned over the cause to the proper officer, whose functions he was temporarily discharging, the President has enjoined him, notwithstanding that he believes it unnecessary, that in the continuation of the case, all possible means of acquittal, and all the considerations which humanity dictates, so far as they are not opposed to the forms of the criminal proceeding, according as our laws have established it, shall be conceded to the accused.

The consul of the United States has, by virtue of his office, the right to protect the criminal, and to interfere ("intervenir") in the prosecution, within the limits which our laws prescribe, and to go beyond which is permitted neither to the courts nor to the executive.

If the declarations of the absent witnesses can be taken in another country, and are presented to the court in an authentic form, they will have, without doubt, due weight in the cause; and if, on the other hand, it may be possible for the consul at Valparaiso to remit through your excellency, to this government, a duly legalized copy of the declarations which the said witnesses made before him, it would be proper for the President ("pudiera llegar el caso de que el Presidente," &c.) in use of his constitutional powers, to take them into consideration in mitigating the rigor of the sentence.

This is what his excellency has ordered me to say to your excellency in reply to your note referred to; and I avail myself of this opportunity to renew to your excellency the assurances of the very distinguished consideration with which I have the honor to be, your excellency's very obedient servant,

ANTONIO VARAS.

The MINISTER Plenipotentiary of the United States.

Mr. Peyton to Mr. Webster.

[Extract.]

[No. 45.]

LEGATION OF THE UNITED STATES,
Santiago, Chile, October 28, 1852.

SIR: I have the honor herewith to enclose a translation of the evidence and proceedings in the case of W. N. Stewart, which was furnished by the judge to William Duer, United States consul for Valparaiso, marked A.

I also send a copy of a letter or report from the said consul, in relation to the same case, marked B, and copies of the affidavits of five persons, corroborating his statement of facts, marked 1, 2, 3, 4, to-

gether with a copy of my note of the 16th instant to Mr. Varas, on the same subject, marked C, to which I have received no reply.

* * * * *

And have the honor to remain, very respectfully, your obedient servant,

BALIE PEYTON.

Hon. DANIEL WEBSTER,

Secretary of State of the United States, Washington.

A.

“Copy of various pieces of the criminal process initiated against William Stewart, (a native of North America,) for having wounded Fermin Castillo, in the quay of this city, the day 23d August, 1852.

“*Judge*, MR. HERGUINIGO.

“*Notary*, NAVARRETE.”

[Translation]

Declaration of the Deceased.

On the twenty-third of August I went to the Charity Hospital of this city, where I found Fermin Castillo, with two wounds penetrating to the lungs, and about an inch in dimension, and another in the muscle of the left arm, which was slight, (superficial,) and about two inches in dimension, who being duly sworn, stated to me: Yesterday about sunset there were some Americans on the mole beating a boy, (a boatman) whose name I do not know, and without any other provocation than having approached to separate them, one of them, of whose name also I am ignorant, gave me the wounds from which I am suffering—I do not know whether with a poniard or dagger; but the fact is, I succeeded in taking from my assailant the weapon with which he struck me, and I left it in a drug store, in Custom House square, where they dressed my wounds. There were many persons present, but I did not know any one of them.

I do not recollect anything more concerning the affair with which this examination was concluded, the contents of which, having been read over to the deceased, were approved by him; said he was twenty-six years of age, and did not sign because he did not know how to write; to which I certified.

CONSTANCIO YBAÑAS.

In continuation, the boatman José Ysidoro Pacheco was sworn, and deposed: About night-fall, on Sunday last, I was passing in company with Fermin Castillo, now deceased, near the mole, where we saw many foreigners—Americans; amongst whom was a boy whom they were beating, whom I did not know, and whom they had thrown

down upon the ground; I drew near with my companion, Castillo, and addressing myself to the Americans, asked them why they were beating the boy; one of them answered me with rough language, ("echandome un ago") and at the same time gave me a blow. Immediately afterwards a fight took place between us, and at this time a multitude of boys, who had approached us, threw stones in every direction; at the same moment my companion, Firmin Rojas, was wounded by a blow from a stone, which was given him by the American who is a prisoner, and which has been transmitted with page number one. Castillo fell upon the ground, and so soon as he had risen up we followed in the direction of the point of the mole, towards which place the said American had retired. We did not find him; and when we came back, the same American spoke to us again, and at the same time grappled with Castillo, who knocked him down. The American rose up half-stunned, and, taking him by the back of the neck, struck him in the lungs with a poniard, and afterwards gave him two more stabs—one in the flank, and the other in the arm. Castillo threw himself upon him, and, catching him by the arm, took his poniard from him, which is the same as that presented to me, and which is designated in the second leaf of this summary. Having kicked him, he threw him upon the ground, and left him stunned. The moment after, both of them being thrown upon the earth, the policeman arrived, and arrested him. The American having been brought to prison, was there shown to the witness, with the leaf number one, and the witness declared him to be the same person to whom he referred, or, in other words, the same person who wounded Castillo. The foreigner said his name was William N. Stewart.

The witness is twenty-nine years of age, and ratifies this declaration, which he does not sign because he does not know how to write, and the judge signs for him; to which I certify.

HERQUINIGO.

Before me :

NAVARRETE.

On the second of September, of the same year, José del Carmen Gonzalez was sworn and deposed: About seven o'clock, last Sunday night, as I was retiring from the mole to my house, I observed a great crowd of people who had collected near the mole: I approached and found that there were two men on the ground—the one a foreigner, and the other a Chileno: the latter was bloody all over, and the general voice of those who surrounded them was that the foreigner had wounded the Chileno. I did not observe any particular person of those who made that indication. I am of age, and ratify what has been set forth.

The witness did not sign, not knowing how to write, which was done by the judge; to which I certify.

HERQUINIGO.

Before me :

NAVARRETE.

OPINION OF THE AJENTE FISCAL.

To the Judge of Letters.

The acting attorney for the State, having examined this summary, says: That José Ysodoro Pacheco is the only witness (leaf 5) who states that he saw William N. Stewart inflict upon Fermin Castillo the wounds of which he died, as is shown by the material part of leaf 3; and although, besides that declaration, there are those which are found on leaves 4, 5 and 8, all concurring in the fact that when Stewart was arrested, the general voice at the place where the affair occurred was, that he was the author of the wounds of Castillo, and there is, besides these declarations, the inference which results from the acknowledgment of the criminal that the poniard or dagger (designated on leaf 2) is his own; nevertheless, the attorney for the State (ajente fiscal) believes that notwithstanding the strong presumptions which these facts create, there is not the full proof which the law requires to impose the punishment of homicide; and being of this opinion, advises that the prosecution of the case be suspended, with the privilege of being continued afterwards if there should be occasion for so doing.

You will, however, determine as you think most in accordance with justice.

BAZO.

VALPARAISO, *September 10, 1852.*

SENTENCE OF THE COURT.

Whereas, from this summary, which, from what appears at leaf number 9, could be proceeded with no further, it results that at sunset of the 22d of August last there was a dispute amongst various foreigners and Chilenos on the mole of this city, and that the deceased, Firman Castillo, who took part in it, received three wounds, one on the left arm, and the other two in the back, having afterwards died from the effects of these wounds, as is stated on leaf 3: to induce the belief that William N. Stewart, against whom this cause is prosecuted, was the author of the wounds which caused his death, the following circumstances present themselves: A witness states that he saw the criminal when he struck the deceased with a poniard, in the lungs, and afterwards gave him two more stabs.

2d. The acknowledgment of the criminal that the knife, with which it is said that the wounds were inflicted, is his own.

3d. The general opinion that he is the person who committed the deed.

However strong these presumptions may be, they do not afford the clear and evident proof which the laws require in order to convict in criminal cases. In view of the fact that it is useless to continue the prosecution of the case at this time, and in conformity with the solici-

tation of the "ajente fiscal," and the provisions of the 26th law, title 1, part 7, *let the cause be suspended*, until more facts are obtained, either to proceed against the said criminal, or any other person. Let it be made known and consulted.*

GUERRERO.

Before me :

NAVARRETE.

VALPARAISO, *September 21, 1852.*

B.

VALPARAISO, *October 14, 1852.*

SIR: I have to acknowledge the receipt of your letter of the 2d instant, enclosing a copy of a communication addressed to you by Mr. Varas, dated September 30, in which communication is stated the substance of a report made by J. A. Herguenigi, late acting criminal judge of Valparaiso, relative to the case of W. N. Stewart.

It does not appear to be denied by Mr. Varas that the facts stated by me in my letter to you of the 27th of August last warrant the conclusions drawn from them, and show a very clear and gross case of denial of justice; but he has chosen to rely upon a report made to him by the party implicated, which differs, in some essential particulars, from my statement, and gives a very different complexion to the whole transaction.

My letter of the 27th of August was written while the facts were fresh in my mind; and so far as they are stated as of my own knowledge, it is not possible that I can be mistaken as to them. So far as they depend upon the testimony of others, I have carefully re-examined them in every part, and I now reiterate that that letter contains a true and correct account of the facts as they actually occurred, and that in every respect in which the report of the judge departs from the statements therein contained, it departs from the truth.

It cannot be necessary that I should repeat in detail what I have said before; but I will notice some of the more important points in which the report of the judge is untrue. It is not true that he promised he would proceed to the examination of the witnesses on the day after my application to him for that purpose. On the contrary, I applied to him on Monday, and he refused to proceed to such examination until the Wednesday following. It is not true that the witnesses did not appear at the time appointed. On the contrary, they appeared, and the judge refused to hear them, deferring the examination until the following day, and promising me to give me notice of the time and place, which he neglected to do. And, lastly, it is not true that the Venice remained in port two days after Thursday, the day on which the examination of the witnesses in Stewart's favor commenced. On the contrary, she sailed next day.

* "CONSULTESE," let it be consulted—i. e., let it be examined into by some higher judicial officer, having a supervisory jurisdiction

There were four days (Monday, Tuesday, Wednesday, and Thursday) in which the witnesses might have been examined. I applied to the judge at the earliest moment, and immediately after I became informed of the existence of important testimony in Stewart's favor—namely, on Monday morning. There was not on my part any *laches* or neglect whatever. On the contrary, the judge unnecessarily deferred the time of taking the testimony, refused to take it at the time appointed by himself, and finally refused to complete it when commenced; and all this was done with full notice that, in consequence of these delays, the accused might probably be deprived of important testimony in his favor, as at last actually happened.

In order to place the facts of the case beyond controversy, I have taken the testimony of five witnesses establishing the accuracy, in every respect, of my former statement, and I send you herewith copies of their depositions.

To this might be added, if at all necessary, though it is true not without some difficulty, the testimony of the captain and mate of the *Venice*, of the three seamen referred to, and of several other passengers, all of whom accompanied me to the carcel on Wednesday morning, and could consequently prove that the witnesses attended at the time appointed, and that the judge refused to hear them, and several of whom could corroborate in other respects the statement I have made.

I might think it my duty to submit to you the propriety of requesting the government of Chile to remove from office a functionary who has shown himself so unworthy; and that not from any petty insolence to myself, but because it may happen hereafter that complaints of a criminal character may be preferred in this court against American citizens; and in such case I should not feel that there was adequate protection for their life or liberty with such a judge. But I am informed that the person referred to only temporarily discharged the duties of judge, and that he has been replaced by a gentleman of character and capacity.

I regret that my answer to your letter has been delayed by my inability to procure at an earlier day the testimony of the witnesses whose depositions I have taken.

I am, very respectfully, your obedient servant,

WILLIAM DUER,

United States Consul.

His Excellency BALIE PEYTON,

United States Minister, &c., &c.

No. 1.

UNITED STATES CONSULATE,

Valparaiso, Chile.

Charles De Ronceray, being by me duly sworn, deposed and said as follows:

I am clerk of the American consulate at Valparaiso; I remember

hearing of the affray which took place upon the mole in this city, upon Sunday, the 22d day of August, in which a Chilean was stabbed.

On the Monday following, several passengers of the Venice came to the consulate and conversed with Mr. Duer in reference to the transaction upon the mole, of which some of them had been eye-witnesses. As the Venice was ready to sail on the following day, Mr. Duer, in company with Mr. Henequel, called upon the Judge of Crime to request that he would proceed to take the testimony of the said passengers immediately. Upon Mr. Duer's return he stated that the judge had refused to take the testimony at that time, but had appointed for the purpose the Wednesday following. At the request of Mr. Duer, I asked Mr. William Bogardus to go with him to the judge's office at the carcel on Wednesday, with a view of acting as interpreter, which he consented to do, and accordingly, at the time appointed, proceeded with Mr. Duer to the carcel, together with the witnesses. On Mr. Duer's return he informed me that the judge had again refused to take the testimony of the witnesses, but had promised to do so on the following day, and to give him notice of the time and place. On the following day the captain and the witnesses again called at the consulate, when the captain declared that he could no longer delay sailing, having a valuable cargo, and being apprehensive of the consequences of said delay to himself and owners. After waiting some time in expectation of receiving a message from the judge, Mr. Duer addressed to him a note, and then proceeded himself to take the testimony of the said witnesses. Some time afterwards, and about two o'clock p. m., a message was received from the judge that he was then ready to hear the testimony of the said witnesses, and they accordingly repaired to his office at the intendencia.

I was afterwards informed that the testimony of one of said witnesses only was taken, and that the judge had appointed the following day (Friday) to take the testimony of the others.

On Friday, at about 12 o'clock m., the witnesses not appearing, I called upon the judge in company with Mr. Jenequel, and stated to him that I was ignorant whether the Venice had actually sailed or would sail that day or not; but if not, that the said witnesses would undoubtedly make their appearance, when they should immediately wait upon him. To which the judge replied, in substance, that if they came he would hear them, but he did not care whether he examined them or not.

I further state that I know that the captain was ready and desirous to set sail on Tuesday, the 24th of August, and that he actually delayed sailing some days at the written request of a number of the passengers. And I further declare that after Thursday, the 26th day of August, neither the captain nor any of the passengers of the Venice were seen on shore by myself, nor, as I believe, by any one else. And I have been informed by the consignees that she actually sailed on Friday, the 27th, at or about the hour of 12 o'clock m.

CHAS. DE RONCERAY.

Sworn to before me this 8th day of October, 1852.

[SEAL.]

WILLIAM DUER,
United States Consul.

No. 2.

At the request of Mr. Duer, United States consul at Valparaiso, I make the following statement :

I accompanied Mr. Duer when he went to the office of the criminal judge with certain witnesses in the case of Wm. N. Stewart, for the purpose of acting as interpreter.

When there I found present a gentleman who acted as interpreter, but I remained in the office of the judge during the interview.

Mr. Duer in that interview stated to the judge that he had brought with him the witnesses in the case of Stewart, and that they were then present and ready to be examined, and he requested the judge to proceed to take their testimony. This the judge declined then to do, although urgently requested by Mr. Duer, who stated that the Venice was ready for sea, and that if the testimony were not then taken, it might be lost altogether. The judge, however, persisted in his refusal, but promised at last that on the following day he would take said testimony, and that he would give Mr. Duer notice of the time and place.

WILLIAM BOGARDUS.

Sworn to before me this 11th day of October, 1852.

[SEAL.]

WILLIAM DUER,
United States Consul.

No. 3.

At the request of Mr. Duer, United States consul at Valparaiso, I make the following statement :

On Monday, the 23d of August last, I called, in company with Mr. Duer, upon Mr. J. A. Hermenigi, then acting as criminal judge in Valparaiso, and I acted as interpreter in a conversation which Mr. Duer had with the said judge. Mr. Duer, in such conversation, stated to the judge that there were certain persons, passengers in the American ship Venice, then on the eve of sailing for San Francisco, who could give important testimony in favor of W. N. Stewart, an American citizen, who had been arrested and was then in prison upon a charge of stabbing a Chilean ; and Mr. Duer requested that, under the circumstances of the case, the testimony of such persons might be taken immediately. This the judge refused to do, but appointed for that purpose the Wednesday following, on which day he promised to take the testimony of the persons referred to. On the Wednesday following, namely, the 25th day of August, I again met Mr. Duer at the office of the judge in the carcel. Mr. Duer there stated to the judge that he had brought with him the witnesses in the case of Stewart, and that they were then present and ready to be examined, and he requested the judge to proceed to take their testimony. This the judge declined then to do, although urgently requested by Mr. Duer, who stated that the Venice was ready for sea, and that, if the

testimony were not then taken, it might probably be lost altogether. The judge, however, persisted in his refusal; but promised, at last, that on the following day (Thursday) he would take such testimony, and that he would give Mr. Duer notice of the time and place. Mr. Duer, then, at the request of the judge, proceeded to give testimony before the said judge in reference to a theft that had been committed in his (Mr. Duer's) office.

On the following Thursday, at 2 o'clock p. m., Mr. Duer again brought the said witnesses to the office of the judge in the intendencia, and then withdrew at the request of the judge, who thereupon commenced the examination of the said witnesses, I continuing to be present and acting as interpreter.

After the examination of one of the witnesses had been taken, the judge declared he could proceed no further on that day. It was then about 3 o'clock. I urged him to take the testimony of the other witnesses, stating that the vessel had been detained some days already, and would very probably sail on the next day; but he said he was tired, and remarked, with a shrug of the shoulders, that the witnesses might come to-morrow if they pleased; and if not, he did not care.

On the following day, being Friday, the 27th of August, I called upon the said judge, with Charles de Ronceray, esq., a clerk of the United States consulate, who stated to the judge that the witnesses had not yet made their appearance, and that he did not know whether the Venice had sailed or would sail that day or not, but that if she should not sail, the witnesses would no doubt soon come on shore, and that he would immediately send or bring them to the judge's office; to which the judge replied, in substance, that if they came he would hear them, but that he did not care whether he examined them or not.

HUGO HENEQUEL.

Sworn to before me, the 12th day of October, 1852.

[L. S.]

WILLIAM DUER,
United States Consul.

No. 4.

On this 13th day of October, 1852, before me, the undersigned, personally appeared Heman B. Potter and Benjamin Planzas, who being by me duly sworn, deposed and said that they are attached to the house of Lopez and Patori, merchants of Valparaiso. The American ship Venice was consigned to said house of Lopez and Patori, and that the said ship sailed from Valparaiso on Friday, the 27th of August, at about the hour of 12 o'clock m.; and the said Heman B. Potter for himself doth further declare that, at the time of the sailing of the said ship Venice, he was off in the harbor and saw her under way.

In testimonium veritatis.

[L. S.]

WILLIAM DUER,
United States Consul.

HEMAN B. POTTER.

BENJAMIN PLANZAS.

C.

LEGATION OF THE UNITED STATES,
Santiago, Chile, October 16, 1852.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, near the government of Chile, has the honor herewith to enclose for the information of his excellency Señor Don Antonio Varas, minister of state and foreign relations of Chile, the copy of a letter, bearing date the 14th instant, which he has received from William Duer, esq., consul of the United States for the port of Valparaiso, marked A, and also copies of the depositions or sworn statements of five persons, to wit: of Charles de Ronceray, William Bogardus, Hugo Henequel, Heman B. Potter and Benjamin Planzas, which accompanied the same, marked in the order in which they are named, B, C, D, and E.

His excellency will observe that this letter and these depositions have been elicited in consequence of his note of the 30th of September last, a copy of which the undersigned forwarded to Mr. Duer, in order that he might have an opportunity of replying to the representation of facts as set forth in the same, which appear to have been predicated on information derived from the criminal judge of Valparaiso, who presided in the trial of W. N. Stewart, an American citizen arraigned on a charge of murder.

The papers fully sustain the facts as stated by the consul in his note of the 27th of August, a copy of which was communicated by the undersigned to his excellency, with his note of the 5th of September last; from all which it appears that the accused has been deprived of his evidence by the wilful and illegal conduct of the criminal judge of Valparaiso, or of the person temporarily acting in that office, who repeatedly declared that he did not care whether the testimony was taken or not, and this in a case involving life and death.

The undersigned considers the case as fully made out, and that the evidence of the consul, and five other respectable men, leaves not the shadow of a doubt as to the wilful neglect of the judge in the performance of his duty, by not taking the testimony of the witnesses in behalf of the accused. With regard to the suggestion of his excellency that all due and proper consideration would be given to a copy of the depositions taken for the accused by the consul, or if the same should be retaken in California, the undersigned begs leave to remark that no such copy can be adduced, for the reason that the papers were torn to pieces and destroyed by the judge, and that the consul has already stated the substance of the said depositions as fully as he is able to do, a copy of which statement has been already communicated to his excellency.

As to his retaking the depositions in California, it is practicably impossible for the accused to do so.

He is a close prisoner in Valparaiso; and even if he were permitted to visit California for that purpose, by the time he could reach San Francisco, in all probability the ship would have sailed, with her officers, to some other part of the world, and the passengers would have

been scattered throughout the mines of California, so as to render it difficult, if not impossible, to find them. And, further, such evidence as this would have no legal validity, and, of course, very little weight before the courts of Chile, even if it were produced in the form and manner indicated by his excellency, when, according to the laws of Chile, the accused had a right to present his testimony, taken in a legal way, so as to be entitled to the same weight as that adduced on the part of the government against him.

If it is moral and satisfactory, and not strictly legal evidence, which is desired, in order to justify the interposition of the executive of Chile, it seems to the undersigned that the statement made by the United States consul of the substance of the depositions which were destroyed by the judge is amply sufficient for that purpose. At all events, it is the most satisfactory evidence which it is in the power of the consul or prisoner to produce (owing to the violent and extraordinary conduct of the judge) of what these witnesses *did swear*, and *would have deposed* to in a legal form.

Since the undersigned had the honor of addressing his excellency on the 5th of September, he has received from William Duer, United States consul for Valparaiso, a transcript of the record and proceedings of the criminal court of that place in the case of the said Wm. N. Stewart, from which it appears that the accused was put upon his trial in the absence of counsel and without his testimony; and that after taking the opinion of the law officer of the government upon the sufficiency of the evidence adduced on the part of the government, it was decided that the same was insufficient, according to the laws of Chile, to convict the accused of the crime with which he stood charged.

It further appears that, instead of discharging the prisoner, upon the failure of the government to establish his guilt, according to the laws of the country, the judge decreed that he would postpone a final judgment in the case, with a view to obtain further testimony, either against the accused or some other person.

The undersigned does not pretend to give anything more than the substance of these proceedings, with which he supposes his excellency has been furnished, as the decree bears date the 21st of September last.

From which, it would seem that the said Stewart has been brought to trial; and under the most disadvantageous circumstances, he has been in effect acquitted, but is still detained a close prisoner, with a view, as it would appear, of experimenting upon his life, by seeking new testimony, thus placing his life in jeopardy again, after he had been tried and acquitted, or, that which is equivalent to an acquittal, a decision to the effect that the evidence was insufficient to convict him, and this, too, in an *ex parte* proceeding, where the accused was neither present nor heard by counsel, and in the absence of his material evidence.

Under these circumstances, the undersigned feels himself called on, in defence of the life and liberty of an American citizen, to protest, as he hereby does, in the name of his government, earnestly and solemnly protest, against the further detention, trial, or punishment of the said W. N. Stewart, and appeals to the government of Chile

for his discharge, without any unreasonable delay. The undersigned considers this course of action on the part of the government of Chile is alike due to justice and humanity, as well as to the friendly relations subsisting between the two countries, which he is desirous of strengthening and perpetuating.

With these sentiments, the undersigned renews to his excellency, the minister of foreign relations, assurances of his distinguished consideration.

BALIE PEYTON.

His Excellency Señor Don ANTONIO VARAS,
Minister of State and Foreign Relations, Chile.

Mr. Peyton to Mr. Webster.

[Extract.]

[No. 46.]

LEGATION OF THE UNITED STATES,
Santiago, Chile, November 13, 1852.

SIR: * * * * *

I have received no reply to the note which I addressed to the minister on the 16th of October, relative to the case of W. N. Stewart, which case, as I am informed by William Duer, esq., United States consul for Valparaiso, is about to be taken up and tried over again, with what result it is impossible to predict.

I do not think it necessary to repeat the views which I have heretofore expressed of this case, and which remain unchanged.

I remain, &c., &c.,

BALIE PEYTON,

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

Mr. Peyton to Mr. Webster.

[Extract.]

[No. 47.]

LEGATION OF THE UNITED STATES,
Santiago, Chile, November 28, 1852.

SIR: I have the honor herewith to enclose a translated copy of the last note of Mr. Varas relative to the case of W. N. Stewart, which I received on the 16th instant, after the departure of the last mail. I also forward the copy of a letter, with which I have been furnished, addressed by William Duer, esq., U. S. consul for Valparaiso, to the Judge of Letters, at that place, who presides in the trial of Stewart.

You will observe that the minister states that there has been as yet no trial, no steps taken except those which are preliminary to a trial,

although the cause has been carried to the superior court at Santiago and remanded. I certainly considered the cause as having been tried, and was sustained in this view of the case by Mr. Duer, who has employed counsel to assist him in the defence of the accused.

I did not, however, indicate the time when or the manner in which the executive power should be used, but invoked its exercise as the only means of protecting a man whose life was placed in imminent peril by the illegal and wilful conduct of a judicial officer of this government, whose duty it was to have taken the depositions of his witnesses.

With regard to the constitutional power of the Executive to interfere before trial and sentence, I will remark that Chile is a central consolidated government, the President having the power to appoint governors, judges, law officers, &c., &c., in all the provinces, most of whom, except the judges, are removable at his pleasure; and I had supposed that the Executive might, in the exercise of his legitimate powers, order a "*nolle prosequi*" to be entered in a case like the present at any stage of the proceedings. But be this as it may, it is very certain that, at the present time, a mere intimation of the wishes of the Executive would be sufficient, inasmuch as the country is under martial law, by virtue of which the President may imprison or banish to the penal colony of Magellan, or to the island of Juan Fernandez, at his pleasure, without accusation or trial, any citizen of Chile, not excepting his honor the Judge of Letters or the prosecuting attorney, and it could not be a very great stretch of authority to order a "*nolle prosequi*" to be entered in such a case as this.

From the tone of Mr. Varas' note, I am inclined to think that the government will not assume the responsibility of shooting Stewart, but will afford him every opportunity to die in a loathsome prison, where he is confined in the same room with every grade of malefactor, many of whom are heavily ironed, though I am informed he is not.

If he should be condemned, he may be pardoned, or it is more likely that his punishment will be commuted to a term of years in the chain-gang, as is intimated by Mr. Varas, if I rightly understand his meaning, which I should consider an augmentation rather than a commutation of punishment.

November 29.—Having written this far, I had the satisfaction to receive, by the mail of this morning, a despatch from Hon. C. M. Conrad, acting Secretary of State, (No. 20,) under date the 12th of October last, the contents of which, if necessary, I shall not fail to communicate to this government.

* * * * *

I remain, very respectfully, your obedient servant,

BALIE PEYTON.

Hon. DANIEL WEBSTER,

Secretary of State of the United States, Washington.

[Translation.]

SANTIAGO, *November 11, 1852.*

The undersigned, minister of foreign relations, has had the honor to receive the note which Mr. Peyton, envoy extraordinary and minister plenipotentiary of the United States of America near this government, addressed to him on the 16th of October, in which, referring to the accompanying documents, he considers it sufficiently established that the conduct observed by the criminal judge of Valparaiso, in the prosecution against W. N. Stewart, has been irregular and illegal, and that, in consequence thereof, the criminal has been deprived of the means of establishing his innocence—deducing from this that there is sufficient motive for the interposition of the action of the government in favor of Stewart. His excellency afterwards proceeds to make some observations concerning the course of the cause, and concludes by appealing to the government of Chile for the discharge of the criminal, and protesting against the further detention, trial, and punishment of the said Stewart.

Confining myself to the first part of the note of your excellency, I will observe that, admitting as proved the fact that the criminal judge of Valparaiso, proceeding in a wilful and irregular manner, did not receive, as was his duty, the declarations of the witnesses presented by the North American consul in Valparaiso, which, according to the opinion of the consul, proved the innocence of the criminal—nevertheless, the government could not possibly interfere in the manner indicated by your excellency, nor in any other. The criminal, Stewart, is subject to the judicial authority, and there is no power in the government to withdraw him from it. Your excellency knows that the judicial power in Chile, as in the United States, is independent—that it proceeds by itself alone, and under its own authority; and that the individual subjected to that power has, in the laws, means of protecting himself against abuse or incompetency.

Besides, although the declarations have not been taken, it is not to be inferred that he is to be declared guilty of the crime imputed to him if he be innocent.

Although appearances may have presented him as the author of the crime, and may have furnished sufficient cause for proceeding against him, it does not follow that he has to be condemned.

Proof sufficient to authorize a prosecution is not sufficient to condemn; and if the failure to take the depositions prevent him from fully vindicating himself, he may, notwithstanding, be acquitted, if it be not proved that he is really the author of the crime imputed to him, which is naturally to be expected, supposing him innocent.

The omission to receive the declarations may, without doubt, leave the criminal with a less favorable cause, but nothing more can be said of it. The undersigned has said above that the intervention of the government, at the present time, the case being still pending, is not possible. All that it can do is to urge the judge or court to prosecute it with zeal, collect all the testimony, and accelerate the case. This is not opposed to the indication which I made to your excellency, in

my former note, on asking you if it were possible to transmit to me a copy of the declarations taken by the consul, in order that they might operate on the mind of the government. When I spoke thus, I had in view the power of pardoning or of commuting the punishment, which appertains to the government; and I believed that if, from those declarations, the criminal should appear innocent of the imputation of assassination, or there should be sufficient evidence to produce the moral suspicion of his innocence, and the irregular proceeding of the judge being proved also, these considerations would have much weight on the mind of the government and of the council of state to reduce or commute the punishment which might be imposed upon him by the tribunals, in view of the result of the process to which they, according to our laws, ought to adhere.

Your excellency sees that this case could only happen after the cause had been definitely determined. When it does take place, the undersigned has no hesitation in repeating to his excellency that every attention will be given to these considerations, and that the government will be pleased in taking this constitutional, although extraordinary course, in order to do justice, and to repair the evil of the proceeding which is attributed to the judge.

The undersigned understands that his excellency, on insisting in showing and proving that the criminal judge of Valparaiso observed a reprehensible conduct in not receiving the declarations at the proper time, considers that this circumstance gives force to the equitable considerations which favor Stewart. If the view of his excellency were different, he will please make it known to me.

Passing now to the second part of the note of your excellency, I ought to make known to you, that the course the cause has followed since your former communication is that which our laws prescribe, and the observations which your excellency makes argue nothing against the conduct of the judge, who has done no more than to conform to the law. Our laws, with accidental differences, recognise the same divisions of the criminal proceedings "*de officio*" (i. e. *ex officio*) which all enlightened legislation sanctions—divisions known amongst us as the *trial for information*, or the *summary*, ("*juicio informativo o sumario*,") and that of *full proof* or *final trial*, ("*comprobacion o plenario*.")

The first includes the collection of the facts which prove the violation of the law and the discovery of the person of the delinquent, in order to proceed afterwards to his apprehension and confession. This part of the process, from its nature, is secret; it corresponds to that which is denominated a *trial for information* ("*juicio de instruccion*") in those countries which admit trial by jury, and which necessarily precedes the action of the first jury, which, determining the character of the offence, declares whether or not there is sufficient ground to authorize a prosecution. Thus far, as well in the proceeding by jury as in ours, the criminal is not permitted to show his innocence, and all that humanity requires is the proper treatment of him of whom it is not known whether he be innocent or guilty, and the notification of the cause of his arrest.

The summary trial being concluded, the judge proceeds to deter-

mine the judicial merit of the evidence collected ; and if he does not find in it sufficient grounds to proceed to the final trial, ("al juicio plenario,") or to declare whether there are or are not sufficient grounds to authorize a prosecution, the suspension of the cause, or the complete discharge of the person proceeded against, according as the case may be, is declared. But this decree of the inferior court is not executed until the supreme tribunal reviews the process ; and the latter may confirm the decree of the inferior judge, revoke it, or order the hastening of the summary examination, or that the final trial be immediately entered upon, the state of the case which corresponds to the action of the second jury, or the jury which determines the case. At this stage of the proceeding, and not before, the criminal enters upon the exercise of his right of defence, for which our legislation affords ample means, and which is favored by the law.

Your excellency objects that Stewart had neither counsel nor witnesses, and that notwithstanding sufficient proof was not found to condemn him, the case was merely suspended, and he was not acquitted and put at liberty. The exposition which I have just made to your excellency, of the criminal proceeding established by our laws, will convince your excellency that all those acts were legal, and that the judge did no more than to comply with his duty, and that the execution of the laws of the country and the legal course of the action of justice cannot afford grounds for protests. The criminal has not had counsel because the cause has only been in a preliminary state, and has not yet reached the stage at which the proceedings are public. The evidence which he would have been able to present has not been received, because, whilst the case is in the preliminary state, nothing more is intended than to procure sufficient information to enable the judge to determine whether or not there are sufficient grounds to authorize a prosecution ; and if the judge has ordered a suspension of the case, and has not acquitted the accused, it is because he has the power to proceed thus ; and if, notwithstanding, Stewart has continued a prisoner, it is because the decree of the inferior judge by itself alone, in causes of this nature, can produce no effect until confirmed or approved by the supreme tribunal.

Mr. Peyton knows very well that by the law of nations every foreigner is subject to the tribunals of the country in which he happens to be, as other inhabitants or citizens are, and that the offences of which he may appear to be guilty, or which he may commit, ought to be judged according to the laws of the same country ; and as, in the course which the case of Stewart has taken since the former communication of your excellency, the proceeding which these laws prescribe has been observed, and he has been treated as any other inhabitant or citizen, I do not see any cause of complaint. The facts which, as it appears to me, by a mistaken view of the laws which regulate the criminal proceeding in the republic, your excellency supposed to be faults, are not such, as I have just shown.

Your excellency knows that in this matter each country is free to establish such rules as it may judge proper, to which every one who administers justice ought to adhere. I do not doubt that the penetration of your excellency will recognise the force of these observations,

and that you will be convinced that there is no cause for protests of any kind, as the execution of the internal laws of a country as respects foreigners who reside within its territory would not admit it.

These principles, which are, in every respect, conformable to international law, are also the only ones consistent with the independence of each State, and the good harmony and perfect equality of the relations of one country to another.

Your excellency not only protests, in the name of your government, against the further detention and trial of Stewart, but also appeals to the government of Chile for his discharge, without any unreasonable delay. Your excellency will permit me to observe that, even in the supposition that the course which the cause has taken were illegal, the appeal of your excellency to my government for the discharge of the criminal could not produce the effect desired. The judicial power is independent, and the Executive cannot withdraw from it an individual who has been legally subjected to its jurisdiction. My government, in discharging Stewart, would be guilty of a grave offence, would commit a violation of the constitution, as I understand the government of the United States would commit, proceeding in a like manner.

However much this government may desire to strengthen its relations of friendship with the North American Union, by the extreme importance which it gives to indications of interest and benevolence towards the subjects of that republic, it would not be possible in any manner to adopt the line of conduct which Mr. Peyton proposes. Above every other consideration, it would be an imperative duty to respect the constitution, and to have the laws fulfilled—a duty which, if at first sight it appears to be solely for the benefit of the natives of the country, is also for the benefit of foreigners, who, as inhabitants of the country, are interested in having the guarantees secured by the law respected by the government, as also by the other authorities of the State.

On submitting to the enlightened judgment of Mr. Peyton the observations which the undersigned has just had the honor to set forth, he cherishes the confidence that his excellency will be convinced that the proceeding in this case is conformable to the laws of the republic; and that if it were not so, the government of the undersigned would have hastened to dictate the necessary measures for the due protection of the rights of a North American citizen, conforming itself not only to its duty, but also to its sincere desire of maintaining the friendly relations which bind it to the United States.

The undersigned will conclude this note by informing his excellency that a few days after the receipt of the communication to which he is replying, the case of Stewart came in review before the supreme court of justice, and that this tribunal, not confirming the decree of the inferior court, has remanded the case, in order that the summary may be hastened and definitely determined. The undersigned, when it came to his knowledge that the case was in Santiago, believed that in the space of a few days he would be permitted to reply to Mr. Peyton in view of the process; but in consideration of the course which the cause has taken, by reason of the decrees of the criminal judge and of the supreme court, and appreciating the observations of Mr.

Peyton, has thought proper to make the present reply without further delay, and avails himself of this opportunity to reiterate to Mr. Peyton the assurances of his high and distinguished consideration.

ANTONIO VARAS.

The ENVOY EXTRAORDINARY AND MINISTER

PLENIPOTENTIARY of the *United States of America.*

VALPARAISO, November 16, 1852.

SIR: I have had the honor to receive your letter of the 13th instant, making inquiry as to the contents of certain depositions taken by me in the case of William N. Stewart.

The circumstances under which those depositions were taken and destroyed, together with the neglect of the person then acting as criminal judge to take the testimony of the witnesses in Stewart's favor, have formed the subject of a communication from me to his excellency Balie Peyton, United States minister at Santiago, and have caused a demand to be made by the latter gentleman upon the government at Santiago for the immediate discharge and release of the prisoner.

It is the opinion of Mr. Peyton that I ought not to take any course that may be construed as waiving the objections heretofore taken to the proceedings in this case, or that may weaken in any degree the demand which he has made upon the Chilean government.

It is obvious that my recollection cannot supply the place of the depositions which have been destroyed; and, even if they existed, they could not be a substitute for those which the judge himself ought to have taken. I do not feel at liberty to decline answering the interrogatories put to me, but I must do so upon the express condition that my so answering must not be considered as a waiver or abandonment of any objections, protests, or demands heretofore made by me, or by the American minister at Santiago, and that I must not be considered as consenting to the substitution of any testimony either for the depositions which are destroyed, or for those which ought to have been, but were not, taken. With this explanation, I reply that three witnesses were examined by me, being previously sworn in due form of law. The details of their testimony I cannot state; but it showed, in substance, that Stewart, while standing peacefully on the mole, in company with several others, and having taken no part in the affray, was violently assaulted by a number of persons armed with brick-bats, and one, at least, with a knife, who knocked him down, beat him, and fell upon him in confusion, and that, until the time he was knocked down, he neither drew a knife nor struck a blow, and that afterwards he was so pressed and covered with persons that it did not seem possible for him to do so.

In addition to this, the testimony of one of the witnesses showed that another person was, by his own confession, guilty of the act. All this is consistent with Stewart's own declaration that he was

knocked down senseless at the first assault, and supports the hypothesis that some other person used Stewart's knife to avenge him.

The testimony of the witnesses examined by me established these two positions: First, that it was not probably Stewart, but another, who struck the fatal blow; secondly, that if otherwise, his own life was in danger, and that the act was justifiable as one of self-defence.

I am, very respectfully, your obedient servant,

WILLIAM DUER,
United States Consul.

Hon. J. SANTO. MELO,
Judge of Letters, Valparaíso.

Mr. Peyton to Mr. Everett.

[Extract.]

[No. 49.]

LEGATION OF THE UNITED STATES,
Santiago, Chile, December 13, 1852.

SIR: * * * * *

I herewith enclose the copy of a note which I addressed to Mr. Varas, the minister of state and foreign relations of Chile, relative to the case of W. N. Stewart, an American citizen, who has for several months been confined in prison at Valparaíso on a charge of murder, to which I have, as yet, received no reply. Commodore Dulany is expected to arrive in the port of Valparaíso at an early day, where the orders which were issued to Commodore McCauley, instructing him to sustain the demand which I was directed to make on this government for the release of Mr. Stewart, are awaiting him. I have now every reason to hope for the release of this man. In fact, the prompt and decided action of the government at home is calculated to exercise a most salutary influence on this coast, where the rights of American citizens are habitually violated and the flag of the United States is treated with but little respect. Indeed these South American States presume much more on their weakness than do the most powerful nations of the Old World on their strength. * * *

I remain, very respectfully, your obedient servant,

BALIE PEYTON.

LEGATION OF THE UNITED STATES,
Santiago, December 8, 1852.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America near the government of Chile, having submitted to his government the facts relative to the arrest and imprisonment of W. N. Stewart, a citizen of the United States, on a charge of murder, has the honor to inform his excellency Señor Don

Antonio Varas, minister of state and foreign relations of Chile, that he is instructed by his government to make the following communication to the government of Chile:

The President of the United States having been informed by the undersigned that he contemplated laying the case before the government of Chile, expresses the hope that, upon the said representation of the facts, and particularly of the conduct of the judge in refusing to hear testimony in his defence, the government will either release him without trial, or, if he shall already have been tried and convicted, will pardon him.

In case, however, his efforts to procure the discharge of the said Stewart shall have been unavailing, the President instructs the undersigned to lose no time in communicating to the government of Chile that the government of the United States disclaims any intention to interfere with the administration of justice in Chile, but that the conduct of the judge, in refusing to hear testimony on behalf of the accused, is considered by it as indicating a predetermination to condemn him, and as unworthy the magistrate of a civilized and Christian country; that it cannot for a moment believe that the conduct of the judge will be sanctioned by the government of Chile, or that it will allow a man who may be innocent to be sacrificed from the refusal of the judge to discharge his duty.

If, however, it should be otherwise, and the government of Chile should permit the accused to be deprived of his life or liberty, in virtue of a sentence rendered without hearing the witnesses offered in his defence, and without a fair trial, according to the laws and usages of Chile, the government of the United States, however anxious it may be to cultivate the most friendly relations with Chile, will consider such conduct a gross outrage to an American citizen, for which it will assuredly hold that of Chile responsible.

All the efforts heretofore made by the undersigned to procure the discharge of the said Stewart having been unavailing, in obedience to instructions, he makes this communication to the government of Chile, in the hope that it may be awakened to a sense of justice, and will not permit an American citizen wrongfully and illegally to be deprived of his life or his liberty.

In virtue of the foregoing instructions, the undersigned demands from the government of Chile, formally and in the name of the government of the United States, the release of the said W. N. Stewart.

The grounds upon which this demand is made have heretofore been so fully stated to his excellency by the undersigned, as to render their repetition unnecessary. He will, however, remark, by way of response to his excellency's last note on the subject, bearing date the 11th of November, that this demand is not based on formal or technical objections—such as the mode of judicial proceedings in Chile, or the division of powers between the various departments of its government—but upon the ground that the guilt or innocence of the accused cannot be fairly adjudicated by the court, according to the laws of Chile, the law of nations, or the laws of any civilized state, because the evidence, material, direct, positive testimony of eyewitnesses to the scene, has been lost, and is now beyond the reach of the

court or of the accused, and the prisoner is thus left exposed and defenceless by the wilful violation of law, and a refusal to perform his duty on the part of the judge who presided in the early and most important stage of the case, when all the testimony upon which the issue of guilt or innocence was finally to be decided ought to have been reduced to writing by him. It is because the courts of Chile have not the means of doing justice to the accused; and because, if he be tried, the trial will be *ex parte*; and if condemned, it will be without a hearing; and if executed, it will be perpetrating murder under the name of law;—these are briefly the grounds upon which former appeals and the present demand upon the government of Chile rest.

In reply to the intimation contained in his excellency's said note of the 11th of November, to the effect that neither the Executive of the United States nor of Chile possessed the constitutional power to interfere with the regular proceedings of the courts, by ordering the discharge of a prisoner arraigned for a criminal offence, as in the present case, the undersigned would remark that the President of the United States possesses the undisputed power, which is often exercised, to direct a *nolle prosequi* to be entered at any stage of a criminal proceeding which may be pending in any of the *United States courts*, without the concurrence of the judge or the least encroachment on his judicial prerogatives. And, from the analogy existing between the frames of the two governments, to which his excellency has referred, the undersigned had supposed that the want of power would have been the last ground upon which his excellency would have rested his argument, more especially under existing circumstances, when it is remembered that the Congress of Chile, doubtless for wise and salutary purposes, have invested the President with extraordinary powers, by virtue of which he may, without the form of trial or the necessity of an accusation, cause any citizen of Chile to be arrested and imprisoned, or banished from his home to a distant part of the republic; and it is supposed that even his honor the Judge of Letters, who presides in Stewart's case, could not claim an exemption from this law. The undersigned states most distinctly, that it is far from his intention to call in question the policy or justice of the law of Congress above referred to, much less to intimate that it would be possible for his excellency the President of Chile to abuse the trust confided to his hands; but he refers to the fact as being entitled to some weight when the legitimate powers of the President is the subject under consideration. But the question of the division of powers in this State is one with which foreign nations have nothing to do; their relations are with the executive government of Chile, and to that government alone they are to look for the redress of wrongs, regardless of the particular department by which they may have been afflicted, [inflicted] and if the supreme government possessed no power to prevent the perpetration of the offence complained of, it would be its misfortune; but, in the case of admitted wrong, such want of power would not serve as a justification.

His excellency intimates, in his note above mentioned, that if the accused shall be condemned on his trial, and sentenced by the court,

then the President will be ready to listen to any mitigating circumstances with a view to a *commutation* of his punishment. His excellency will not fail to perceive that this view of the case is altogether inadmissible; that it is not the degree of punishment to which the United States object, but to *any* punishment being inflicted upon one of its citizens who has had no hearing.

W. N. Stewart has now been a close prisoner for nearly four months, confined in the same room with, and surrounded by, every grade of offender in the jail of Valparaiso; and when the undersigned supposed the case was finally settled by his acquittal, he is informed by his excellency that all the proceedings heretofore had in the case are merely preparatory to a trial. The undersigned repeats that it is not the forms, but the substance, of all these proceedings upon which he rests the demand for the release of the accused.

In conclusion, the undersigned expresses the sincere hope that the government of Chile may review its former decision, comply with the just and reasonable demand of the United States, and thereby meet them in a course of reciprocal kindness and justice, such as may confirm those sentiments of good will and feelings of friendship which have ever animated that government towards Chile.

The undersigned, in addressing the present official communication, by order of his government, to his excellency Señor Varas, minister of state and foreign relations of Chile, has the honor to renew to him the assurance of his distinguished consideration.

BALIE PEYTON.

His Excellency SEÑOR DON ANTONIO VARAS,
Minister of State and Foreign Relations of Chile.

Mr. Peyton to Mr. Everett.

[Extract.]

[No. 50.]

LEGATION OF THE UNITED STATES,
Santiago, Chile, December 28, 1852.

SIR: * * * * *

I am informed by William Duer, esq., U. S. consul at Valparaiso, that W. N. Stewart was discharged from confinement by the court on or about the 18th instant; but Mr. Varas has not replied to my note of the 8th instant, demanding Mr. Stewart's release, nor have I received any communication from him on the subject since that time.

* * * * *

BALIE PEYTON.

Hon. EDWARD EVERETT,
Secretary of State of the United States, Washington.

Mr. Peyton to Mr. Marcy.

[Extracts.]

[No. 58.]

LEGATION OF THE UNITED STATES,
Santiago, Chile, May 26, 1853.

SIR: I have the honor to enclose herewith translations of two notes from Mr. Varas, the Chilean minister of foreign relations, one relative to the case of William N. Stewart.

* * * * *

As for Mr. Stewart, he was discharged *nominally* by the court for want of testimony, but *really* in obedience to a demand I made for his release, in pursuance of instructions received to that effect from the acting Secretary of State; and to this cause I attribute the unusual display of temper manifested in the minister's note. * * * * * But as I do not consider the national honor involved, and have no motive for entering into a personal controversy with him, I shall take no notice of the unjustifiable intimations he makes in his note relative to the case of Stewart. It will appear that so far from withholding any information, I promptly laid before my government all the facts and every communication, whether the same were derived or received from the American consul, the Judge of Letters, or the minister himself; all of which will appear by a reference to my previous despatches on the subject.

If he were the minister of a powerful European nation, I should deem it incumbent on me to take notice of his remarks.

* * * * *

I remain, very respectfully, your obedient servant,

BALIE PEYTON.

Hon. WILLIAM L. MARCY,

Secretary of State of the United States, Washington.

[Translation.]

The minister of foreign relations has the honor to salute the minister plenipotentiary of the United States of America, and to say to him that a few days previous to the departure of the government for the southern provinces, the two accompanying notes were being copied; but that operation not having been concluded before the departure of the minister from the capital, they were afterwards sent to him at the south, when various circumstances, which he believes himself excused from specifying, prevented him from despatching them to Santiago, as was his desire.

It has, therefore, been indispensable to defer the transmission of the said notes to the hands of Mr. Peyton until to-day, who will be good enough to excuse the delay which has occurred.

DEPARTMENT OF FOREIGN RELATIONS, *April 28, 1853.*

[Translation.]

SANTIAGO, *January 29, 1853.*

The undersigned, minister of foreign relations, has had the honor to receive the note of Mr. Peyton of the 8th of December last, in which, in obedience to instructions from his government, he insists on his previous demand that the government shall discharge and put at liberty W. Stewart, a North American, who was subjected to trial at Valparaiso, on a charge of assassination, notwithstanding what had been set forth by the undersigned in his previous communications, intended to make known to Mr. Peyton that Stewart being legally subject to the judicial authority, this was the only one which had jurisdiction over him, without any power on the part of the government to withdraw him from it, much less to discharge and put him at liberty, without failing in its duty, and openly infringing the constitution of the State.

The undersigned would have limited himself to acknowledging the receipt of the note of Mr. Peyton, and of announcing to him that Stewart had been discharged and set at liberty in pursuance of the judgment of the tribunals, had he not believed it his duty, to correct the meaning which Mr. Peyton has given to some of the observations of the note of the undersigned of the 11th of November last, to again call the attention of Mr. Peyton to principles of international law which he has not borne in mind, or to which he has not given his attention, and to submit to him some reflections upon the manner in which he has thought proper to call the government of the undersigned to principles of justice, ("i someterle algunas observaciones sobre la manera en que ha creído oportuno llamar al Gobierno del infrascrito á los principios de justicia.") The undersigned can now proceed with a knowledge of the judicial proceedings which, since the decision of the court, he has been able to have before him, which previously was not possible, following the order which our laws establish.

The facts, as they appear from the record, are as follows:

In the night of the 22d of August, 1852, a scuffle took place on the mole, in which North Americans and Chilenos were engaged, and in which Fermin Castillo was seriously wounded.

The police proceeded to the riot, apprehended several persons, and among them Stewart, who was generally pointed out as the author of the wound of Castillo, the designation being corroborated by the circumstance that the knife with which Castillo was wounded, and which he took from the aggressor, belonged to Stewart. The police on the following day made report of the case to the Judge of Letters, and this functionary had to proceed to the organization of the summary information which the laws prescribe, and which is necessary in order that the individual apprehended for having a crime imputed to him may be accused by the public prosecutor. Before the public prosecutor accuses, or, in other words, before the judge, in view of the summary information, declares whether there are sufficient grounds to place the indicated person on trial, there is no judicial charge against him, no accusation against which he can defend himself, nor which he

ought to rebut or to do away with by presenting witnesses or other proofs.

Whilst the case of Stewart was yet in the summary state, during the days of the 24th and 25th, before the judge had determined whether there were sufficient grounds to place him on trial, and consequently before he was accused by the public prosecutor, the North American consul presented himself, asking that the criminal might be heard in his defence, and that testimony might be received in his vindication. The judge very properly declined hearing the defence of a criminal who was really not accused, and before it was even known whether he would be or not: he declined hearing witnesses in his defence whilst as yet no charge had been made out. It might very easily happen that the imputation of the crime which gave occasion for the imprisonment might not be sufficiently corroborated; and in that case Stewart would have been put at liberty without being accused, and consequently without any occasion to hear his defence. The defence is against charges made out—against charges made by the public prosecutor; and until these charges are formally presented, the defence is excused as useless.

Nevertheless, the judge was called upon to take cognizance of the case, to hear the witnesses who might enlighten him as to its circumstances, because all this would effectually conduce to the proper estimation of the motives of the imputation against Stewart; and to the formation of a correct opinion as to whether it was proper to proceed to a formal accusation, discharge the prisoner, or suspend the cause. With this object, the judge signified to the counsel a day and hour for the purpose of receiving the depositions of the witnesses, but he at all times refused, and in this acted properly, to hear the defence when there was no accusation. According to the judge the witnesses did not come at the hour designated; and as it was already late, and he had left the court-room and felt unwell, he was compelled by these circumstances to cite the witnesses to appear on the following day. On the next day, from similar causes, there was only time enough to hear one witness.

A judge who has in his court a great number of causes, as happens in Valparaiso, gives the preference to those which he may deem most urgent, or to those which, in view of their previous state or the delay which has already taken place in regard to them, do not admit of a further delay. This is especially the case in cases of substitutes, and of this class was the case in hand; because the substitute, who was not acquainted with the general affairs of the court, and who, it is natural, should have less expedition, finds himself more embarrassed and needs more time to discharge his duties.

These circumstances do not show how far they may have prevented the judge from exercising greater diligence in concluding the summary in Stewart's case; but taking into consideration the near departure of the witnesses, and that the case involved the investigation of the assassination, the undersigned does not hesitate to express to his excellency that his government has not found all the zeal which the case demanded. In these cases, a zealous judge should prolong his labors much beyond the hours designated, and should endeavor to

put himself above all considerations of weariness or the bad state of his health.

But this is all that can be said of the conduct of the judge in the present case. He has not acted with the zeal which the case required; he has not resisted obstacles which he ought to have conquered in the discharge of the administration of justice; but between this and the bold supposition that he has wished to find Stewart guilty, that he has not wished to receive proof in order that he might not be able to vindicate himself, and that he might eventually be condemned, there is an immense distance.

In the one case he may be accused of being but little zealous—of being indolent, but not criminal; and still less of that calculating perversity which would leave a criminal undefended, in order to condemn him as an assassin. And if, for the purpose of repelling this imputation, it were necessary to make use of the record, it would be sufficient to bear in mind that at the time to which the complaint has reference, there are no other antecedent circumstances against Stewart than the report of the police, which is based upon public rumor and the deposition of the wounded person—proof sufficient to subject the accused to trial, but entirely insufficient to condemn. Had there been sufficient proof, it might have been supposed, without such great temerity, that it was sought to occasion delay, in order that those proofs might be destroyed for the purpose of rendering the justification of the criminal impossible.

His excellency knows that the judge of Valparaiso, on the 21st of September, 1852, ordered the case to be suspended on account of the insufficiency of the proof; and for the same insufficiency final judgment has been pronounced by the same court, which has been confirmed by the supreme court. There has not been, then, any time at which the record might present the offence of Stewart as properly proved in such a manner that it might be supposed, were there any appearance of foundation for it, that it was not desired to afford an opportunity to destroy the effect of a proof sufficient by itself, by presenting proof on the other side of the question.

The undersigned does not propose by the preceding observations to justify the conduct of the judge, nor to approve his want of zeal, but to manifest to his excellency that that conduct, without failing to be reprehensible, is not a crime, nor does there appear any grounds for considering it as the offspring of a malicious intention of leaving a criminal without a defence. As to the first, the government has reprobated it; and as for the second, it has not found a motive which may justify such a belief, unless the tearing of the depositions taken by the consul was sufficient for that purpose. Those declarations could not, in any case, have been used in the cause, although they might have been useful in enlightening the authority which might have had to proceed in a prudential (“prudential”) manner, and not with rigorous justice.

And the undersigned will here observe to Mr. Peyton, that, on indicating to his excellency the recourse upon the council of state, he had in view that the conduct which was attributed to the judge being proved, it might afford grounds for believing that the condemnation

of the tribunals might have been otherwise, had the declarations which were not taken been received. In that supposition, the council of state alone could have constitutionally attended to those considerations. How far they might have weighed on the mind of the council, and its indulgence might have been extended to the prisoner, is a question which could only have been determined in view of the circumstances of the case. The government has not expected an unjust judgment, nor one founded on insufficient proof, which, without doubt, would have demanded a complete pardon; but it has conceived that the facts being supposed to be as Mr. Peyton conceived them to be, there would have been considerations of equity which would have entitled to indulgence in proportion to the importance of these motives and considerations.

If there has been no infraction of the law, if there has been no intention of committing a wrong, nor motive which authorizes or permits it to be supposed that there was; if all that can be affirmed is, that the judge was not so zealous as the case required, the undersigned does not conceive that this affair can be characterized as an outrage, and much less as a gross outrage, nor does he conceive that it ought to give occasion to a formal diplomatic demand, and still less to a sudden intimation but little conformable to the customs of nations, announcing that the republic is held responsible for an offence which as yet is not known to exist.

To have invoked the interference of the government in order that, being informed of the circumstances of the case, it might stimulate the zeal of the judge and require of him an active and proper discharge of his functions, was, in the opinion of the undersigned, all that could be expected. If, whenever any authority, whenever a judge may not show all proper zeal in matters connected with foreigners, of which he has cognizance, a diplomatic demand were to be undertaken, and the course which his excellency indicates in the present case were to be adopted, the regular march of a state would be frequently interrupted, and its independence and sovereignty could not be considered in a proceeding in which it would be necessary that affairs should go out of their natural course, and be submitted to other functionaries than those to whom the constitution has committed them.

In the opinion of the undersigned, to conform to the prescriptions of the constitution and laws of Chile in the proceedings against Stewart, was to conform to the principles of international law. By the laws of Chile, Stewart could not be withdrawn from the judicial authority; it had to pronounce upon his innocence or culpability, conforming to the rules of the Chilean mode of trial. International law prescribes the same. Each country, in virtue of its independence and sovereignty, has an exclusive jurisdiction throughout the entire extent of its territory, and its laws operate in full force on all persons, whether natives or foreigners. It has criminal and police jurisdiction over all offences committed in its territory. Each state possesses the exclusive right of regulating the proceedings of its tribunals, and everything relating to the testimony and formalities of the trial ought to be determined by the laws of the state in which the process is prosecuted.

Stewart being guilty, or accused of being guilty of an offence, was

subjected to the ordinary course of justice, and the investigation of his culpability and his trial had to be conducted according to the rules of the Chile proceeding until final judgment was pronounced; and thus it has happened.

The judge in the first stage of the cause, without transgressing those rules, did not display the proper zeal, and did not proceed with the diligence which the case imposed upon him. But this error of the judge, however prejudicial it might be, could not withdraw the criminal from the judicial authority.

Supposing that error had been a grave crime—that torture had been employed for the purpose of obtaining confession—it would not have had the efficacy of withdrawing the criminal from the judicial authority. The particular judge who committed the crime would have been suspended, put upon trial and judged, and another would have entered upon the exercise of the functions of judge; the judicial power would still remain subject to it. And in the case of a foreigner who is under process, the abuse which the judge makes of it does not destroy the rule of international law, which subjects the foreigner to the judicial power of the state and the rules of the judicial proceedings.

For greater or less dilatoriness—for greater or less deligence—for greater or less exactness with which the laws are fulfilled in the prosecution of a cause, besides the legal remedies which the proceeding offers to the criminal, or to him who conducts his defence—there would be grounds for asking the government to stimulate the judge to a more prompt discharge of his duties, or to invoke the authority of a superior tribunal for the protection of justice; but to make these incidents the grounds of a demand as for a grievance suffered, and to expect that for them the judicial authority may be interfered with, is what no country will accede to, and what should be required of none.

That the abuses of a judge may be taken into consideration by the functionary who succeeds him, for the purpose of taking those measures which may afford a guarantee of a correct decision, notwithstanding those abuses, and, in the last resort, that they may be taken into consideration for the purpose of pardoning the offender, or of mitigating the punishment, is all that equity requires in such a case. On the other hand, the demand of your excellency is founded on an offence which does not exist. Those injurious proceedings of the judge, to which it would have been sufficient to have called the attention of the government, were not the judgment of the judicial authority, the only thing which, being iniquitous, would have constituted an offence fit to serve as the grounds of a formal diplomatic demand. But the demand of your excellency not only rests upon an offence which is taken for granted, but the reparation which your excellency requires is of such a nature that, granting the existence of the offence, neither the government, nor any other constituted government, could concede it. For the individual abuse of a functionary for a private crime, it is asked that my government commit an offence against the constitution; that it absolve a criminal, attributing to it judicial functions against the express prohibition of the organic law. It is sufficient merely to state the import of the re-

quirement, in order that it may be conceived how contrary it is to the principles of justice, to the independence of states, and to the most evident and manifest principles of international law.

And the observation of your excellency, that it is the substance and not the form of the proceeding which is involved, possesses no weight in opposition to these reflections. The foreigner who inhabits a country is subject to the laws of that country, and no distinction can be made as to him, whether it be as to substance or form. Although the authorities upon which the principles announced above rest are highly respectable, the undersigned does not believe it too much to cite your excellency to the principles set forth by your government, unfolded in the answer of the American minister to the Spanish minister in the reclamations concerning the occurrences at New Orleans.

Thus, he says: "The subjects of her Catholic Majesty having voluntarily come to reside in the United States, certainly have no motive for complaint, if they are protected by the same laws and the same tribunals as the natural citizens of this country." More explicit still is the Committee on Foreign Relations of the Senate of the United States in its report concerning the same affair. According to it, "It is understood that the foreigners who come to reside in any of the States, do so with a knowledge of the laws to which they are subjected, as well of the laws which constitute and regulate the government as of those of a mere civil or municipal character."

If in thus discussing the subject in a general way, the demand of your excellency appears unfounded, neither do the particular circumstances of the case give it any strength. Were the declarations omitted to be taken, the only ones which could throw light on the case; were there antecedent circumstances to suppose a criminal combination for the purpose of destroying Stewart, there might, perhaps, be some motive for real and just alarm on the part of your excellency, and for asking the employment of any extraordinary means of saving the life of an innocent man. The affair occurred in a public and open place, in the presence of a large number of witnesses, and the North Americans whose declarations were not received are not the only persons who could give evidence, or the only ones who could testify with honesty and conscientiousness. Perhaps the want of that testimony has rather favored Stewart than injured him. He did not need witnesses in his vindication, inasmuch as there was not sufficient proof against him; it was the prosecution which needed that testimony ("*esos datos.*") The declaration of those witnesses would, perhaps, have served to give greater scope to the investigation; might have indicated to the judge means of informing himself better concerning the facts, and have greater force to the strong presumptions there were against Stewart. But let us proceed. What ought to be supposed in reference to the depositions which the consul took, that they were not received for the purpose of inculpating, or of justifying? What impression did they leave on his mind? The conviction that Stewart was not the author of the crime? No. The report of the consul says:

"The declarations of one of the witnesses not received by the judge would have gone to show that another was, by his own confession, the

criminal." "It appears improbable that Stewart, when on the ground, pressed by the weight of ten or more persons, could have given the mortal wound, and it appears certain that he did not do so before. But even if otherwise, I believe the act was justifiable, being in his own defence, and when his own life was in danger."

According to those declarations, Stewart was pressed down, various persons falling upon him; and this circumstance, which, according to the consul, shows that he was not the author of the wound, may also tend to show that he might have caused it without these witnesses having been able to see it. But the important point is, that the consul only undertakes to say that probably it was not Stewart, but another, who struck the fatal blow; or that if he did give it, he was justifiable, inasmuch as he did it in his own defence. And if declarations, which in the opinion of a person disposed to accept with preference whatever might favor the criminal, give this result, do they constitute the essential, the important, the only thing in the proceedings which could justify Stewart? Can the non-reception of those declarations ever justify or authorize the withdrawing of a criminal from the judicial authority, and the inverting of the constitutional and legal order of things in Chile?

To give such extreme importance to such declarations seems like cherishing the vulgarity of believing that Chile witnesses and Chile judges, from a spirit of nationality, would so far fail in the conscientious discharge of their duties as to falsely criminate an innocent man; but such ideas, if they are excusable in the vulgar, can have no weight on the minds of persons placed in high stations, nor serve as the grounds of proceedings between authorities (*"jestioness entre autoridades."*)

Furthermore, the record shows the spirit of morality and circumspection with which the witnesses have testified, and who have been very far from giving way to prejudices like those which the consul has adopted with such extreme levity. The conduct of the judges has not been less circumspect and just. The judge of the court of first instance, (*"primera instancia,"*) notwithstanding the grave presumptions against Stewart, ordered the cause to be suspended when he did not find all the proof which the law required to condemn; and another judge, acting in his own proper office,* pronounced absolute judgment, which the superior tribunal has confirmed. The judges have proceeded with all that severe exigence with which they are accustomed to pronounce their judgments.

This conduct, which is constantly observed, and the result of the process, eloquently protest against the unjust and offensive proposition advanced by his excellency, and which the undersigned cannot do less than repel in honor of his country, and in honor of the administration of justice, that the case involved the assassination of an innocent man, in the name of the law (*"de que se trataba de asesinar á un inocente á nombre de la lei."*) Such exaggerations, such bold statements,

*The judge who first acted was only temporarily discharging the duties of the office.—Translator.

belong to those who lightly credit vulgar rumors, but are inadmissible for the purpose of making charges against a government.

The observations which the undersigned has had the honor of making excuse him from dwelling upon the assertions of his excellency to the effect that the courts of Chile could not pronounce a just judgment in this case; that the trial would take place without a hearing on the part of the criminal, and without his having an opportunity to justify himself; and that it would be *ex parte*, and his execution would be assassination under the name of the law. If his excellency were better acquainted with the mode of proceeding in our tribunals, and what our laws establish, he would not have been so unjust with them; he would not have made against the magistracy of this country an imputation against which their honorable conduct and their universally acknowledged integrity protest. Nevertheless, it is satisfactory to the undersigned that the government of the United States, as appears from the extract in the note which his excellency communicates to the undersigned, does not authorize the principles of which Mr. Peyton has availed himself. His government protests against all idea of interference in the administration of justice in Chile, directs attention solely to what it judges to be a premeditated design of leaving a criminal without means of defence, and, in the supposition that there may have been such a design on the part of the judge, does the injustice to believe that the government would not sanction such a proceeding, nor allow that an innocent man be condemned because a judge did not comply with his duty. The government of his excellency very justly desires that, under the supposition referred to, a North American citizen shall be protected, but it also wishes that the laws of the country should be respected. If instructed of the case by inexact reports, ("*informes inexactes*,") it has seen in this affair an outrage for which this republic will be held responsible; it has taken care to express that that outrage would exist if Stewart should be judged and condemned without being heard, without a righteous trial, according to the laws and usages of Chile. And has a trial against the laws of Chile been intended? Has the undersigned pretended that a trial not just, not conformable to those laws, would be carried into effect? Has he not urged from the first that it ought to be left to the competent judicial authority to decide and render judgment, conforming to the laws and usages of the republic?

The government of the United States, without being in possession of sufficient data, has only been able to discuss the subject in a hypothetical sense; that there was really an offence, and that that offence, from its nature and circumstances, imposed responsibility upon the government. The undersigned does not doubt that the government of the United States, better informed, will not accept the character which has been given to the case, nor would have believed it proper to remind this government that illegal and abusive acts against a foreigner, imposed responsibility on the government which accepts them, or which countenances their authors. In the case in hand, his excellency commenced his reclamations when there was as yet no act which could be considered as accepted by the government, when there was as yet nothing upon which to base a demand; and his excellency has

asked that the abuses of a functionary be corrected, in a manner contrary to the laws of Chile and to international law. If the government of his excellency had been informed of these antecedents, without doubt, it would have abstained from the official instructions which his excellency has been pleased to communicate to me.

Before concluding this note, the undersigned believes it necessary to explain the sense of some observations in his anterior note. His excellency has understood, on the undersigned making known to him that the government could not withdraw Stewart from the action of the tribunals, that it was its intention to elude responsibility, inasmuch as it concerned the acts of judges, and not of direct dependents of the government. The undersigned knows as well as his excellency that states are heard by the authority which represents each one in the exterior; and that for the acts of any public authority that may offend another state or its citizens, the chief of the government is the authority that responds. But this is not the question. It has not declined to answer, nor to give explanations to his excellency for acts of judges; that which has been represented to his excellency is, that in Chile, he who is accused of an offence, and on that account placed at the disposition of a competent judge, remains from that moment subject to the judicial authority, without any other authority of the state being able to withdraw him from it. Each country is free to establish the rules it may believe most convenient for the adjudication of offences, and no other state can ask that in that country its citizens shall be judged by others.

When the undersigned, in his anterior note, said to his excellency that the government of the United States, as that of Chile, could not withdraw from the action of judicial power an individual legally subject to it, without infringing the constitution, he had in view that which the constitutions of both countries establish. If special laws concede to the government of the United States the faculty of which his excellency makes mention, it is not so in Chile. The proceeding of *nolle prosequi* of the North American judicial system corresponds amongst us to the abandonment ("*desistimiento*") of a demand or accusation made by him who demands or accuses; and with us, the right of accusing belongs to the public prosecutor, ("*ministro publico*"), without any power in the government to give him orders to desist from his proceedings. If he be unjust and rash in these accusations, the tribunals will enforce his responsibility.

The discharge of Stewart by the government would not have been the less contrary to the constitution from its being invested with extraordinary powers. The wisdom of the constitution in this respect is well known. Upon authorizing extraordinary powers, it requires that their extent and the time of their duration shall be determined, and prohibits the granting of judicial power in any case. But even though these powers extended to that point, the government would not have set the example of invading the judicial power with so little occasion ("*con tan pocos antecedentes*") as in the present case.

For the rest, the undersigned regrets that Mr. Peyton should have believed it necessary to occupy himself with the extraordinary power with which the government is invested, of the object which the Con-

gress had in granting them, and of the use which the President will make of them. The undersigned does not see what relation the observations of Mr. Peyton concerning the matter may have with the affair in question, nor does he believe such strictures (“*apreciaciones*”) on the political situation of the country to be in accordance with diplomatic usage. For his part, the undersigned would be much obliged to Mr. Peyton if he will be pleased to omit them in any communications he may have to exchange with this department.

The undersigned avails himself of this occasion to reiterate to Mr. Peyton assurances of his high and distinguished consideration.

ANTONIO VARAS.

To the ENVOY EXTRAORDINARY AND MINISTER
PLENIPOTENTIARY *of the United States of America.*

LEGATION OF THE UNITED STATES,
Santiago de Chile, May 1, 1853.

* * * * *

On the 28th of December last, the undersigned, in obedience to instructions from his government, demanded the discharge of William N. Stewart, a citizen of the United States, then a close prisoner at Valparaiso, on a charge of murder; which demand was predicated on the ground that the said Stewart had been deprived of the testimony of his material witnesses, in consequence of the illegal and culpable conduct of the judge having charge of the case—in this: that he neglected and refused to take the testimony of the witnesses of the accused, who were passengers on their way to California, and finally sailed to the place of their destination, leaving the accused defenceless. In his reply of the 29th January last to the said note, his excellency ventures upon the bold and, in diplomatic correspondence, heretofore untrodden ground of assuming to understand the instructions issued by a foreign government to its minister, in a different sense to that in which he had presented them; not only so, but of intimating that the minister had deceived his government by suppressing or misrepresenting the facts, and, for want of correct information, the government had directed the demand to be made.

His excellency says:

“Nevertheless, it is satisfactory to the undersigned that the government of the United States, as appears from the extract in the note which his excellency communicates to the undersigned, does not authorize the principles of which Mr. Peyton has availed himself.” Again he says: “If informed of the case by inexact or incorrect reports, it [the government of the United States] has seen in this affair an outrage for which this republic will be held responsible; it has taken care to express that,” &c., &c.

“The government of the United States, not being in possession of sufficient data, has only been able to establish, in a hypothetical sense, that there was really an offence, and that offence, from its nature and circumstances, imposed responsibility on the government. The un-

dersigned does not doubt that the government of the United States, on being better informed, will not agree to the character which has been given to the case, and that it would neither have believed it proper to remind this government that illegal and abusive acts against a foreigner imposed a responsibility on the part of the government which adopts them."

"If the government of his excellency had been informed of those particulars, without doubt it would have abstained from making the pressing remonstrances which his excellency has been pleased to communicate to me," &c.

All of which strictures are highly offensive and exceptionable, which the diplomatic representative of the United States at the court of one of the powerful governments of Europe could not have suffered to pass without notice, as the undersigned has done from motives which he has avowed, and which will be appreciated by his government.

That government knows that so far from having suppressed or misrepresented the facts of this case, the undersigned presented it fully and fairly by transmitting to the State Department at Washington without delay a copy of each and every note, argument, and paper which he received from or addressed to his excellency, or the United States consul, relative to the case; which will appear by a reference to the records of this legation and to the archives of the State Department at Washington.

* * * * *

BALIE PEYTON.

His Excellency SEÑOR DON ANTONIO VARAS,

Minister of State and Foreign Relations, Chile.

THE CASE OF THE "ADDISON."

Mr. Peyton to Mr. Webster.

[No. 16]

LEGATION OF THE UNITED STATES,

Santiago de Chile, April 19, 1851.

SIR: I avail myself of the politeness of Col. Z. W. Potter, United States consul for the port of Valparaiso, who has voluntarily offered to become the bearer of despatches from the legation to the department, (free of charge,) to forward to you the copy of a communication which I addressed to the minister of state and foreign relations of Chile, in relation to the impressment by the authorities of Valparaiso, of four seamen (three Chilenos and a Frenchman) from the United States whale-ship "Addison," Thomas H. Lawrence master, who were immediately transferred to the Chilean armed vessel Chile, and by her taken to sea.

I have received no reply from the minister to my last note, a copy of which is enclosed; but as it is possible the affair may be made to assume a grave and important aspect, I deem it prudent to submit the matter to your consideration, and ask your instructions thereon.

Col. Potter being desirous of visiting the United States, I have yielded my consent to his so doing, and have appointed Alfred Ward,

esq., a citizen of the United States, but for many years a resident of Valparaiso, to fill his place in the interim, and notified the same to the government of Chile.

Mr. Ward is a gentleman of character, and a merchant of high standing in the community where he resides, who possesses ample qualifications, and will, I am sure, give great satisfaction to the business community of Valparaiso.

By the mail steamer which will leave in a few days after Col. Potter, who sails in the United States frigate Raritan to Callao, I shall forward you another despatch.

And remain, very truly and respectfully, your obedient servant,
BALIE PEYTON.

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

LEGATION OF THE UNITED STATES,
Santiago de Chile, March 7, 1851.

On the 19th day of October, 1850, the undersigned, envoy extraordinary and minister plenipotentiary of the United States of America near the government of Chile, had the honor of addressing to his excellency Señor Don Antonio Varas, minister of state and foreign relations of Chile, a brief note submitting to him the facts, as stated by Z. W. Potter, esq., United States consul for the port of Valparaiso, in relation to the impressment by the local authorities of Valparaiso, of four mariners, three Chilenos and a Frenchman, from the United States whale-ship "Addison," of which Captain Henry E. Lawrence was master, which vessel was at the time, to wit: on the 15th of October last, in the port of Valparaiso; the said seamen having been transferred immediately from the deck of the said whaler, against the will and remonstrance of the said captain thereof, and placed to serve on board the Chilean armed vessel called the "Chile," and by her taken to sea the morning next following.

In his note the undersigned presented the facts of the case merely, which he considered grave and important, to the consideration of his excellency, without comment, in the full hope and confidence that such measures would have been adopted in relation thereto, by the government of Chile, as were due to the honor of the flag and the interests of the citizens of the United States.

To this note his excellency replied, under date of the 24th of October; and the undersigned regrets that the conclusions of law and fact at which his excellency appears to have arrived are by no means calculated to diminish the gravity and importance of this case.

It appears from the information in his possession, that his excellency felt himself justified in controverting the facts as set forth by the United States consul, and the application of the principles of law to the facts as the same were supposed to be understood by the undersigned.

Perceiving the importance which the case might be made to assume,

the undersigned, upon the receipt of said note of his excellency, lost no time in requesting Z. W. Potter, esq., United States consul at Valparaiso, to prepare in a legal form a full and complete statement of the case; which was accordingly done, but the evidence was not received by the undersigned in time to lay the same before his excellency anterior to his departure from the metropolis on a tour to the south of Chile; and since his return, other pressing engagements have intervened and delayed the reply which he has been solicitous to make to his excellency's note until the present time.

From the facts stated by persons either wholly disinterested, or as nearly so as the nature of their avocations will permit, it appears that the "Addison" entered the port of Valparaiso for a temporary purpose, and was on the eve of her departure with a full crew and every prospect of success in the pursuit of her enterprise; that the master of the vessel having lost a number of his crew, by desertion, at Talcahuano, gave orders forbidding any of his men to visit the shore; ordered the ship to be ready for sea the same day; applied to the American consul for her papers, which he obtained, paid charges, and took leave of the consul; hurried on to his merchants, (Loring Brothers & Co.,) who had cleared the vessel, and requested them to make out his account in order that he might go to sea immediately. And while engaged in this last matter of business, which required but a few moments to despatch, the maritime governor came inquiring for the master of the "Addison," and on learning which was he, addressed him, inquiring whether he had not four Chilenos on board of his vessel; and on being answered in the affirmative, stated the purpose of his visit, which was to go on board and investigate some complaint which they had made of ill-usage on the part of the master. He was asked by one of the merchants whether he would not go on board of the "Addison" without the captain, as he was engaged in business. He replied no, that the master must go with him on board; indeed, he then and there declared his intention of taking off the sailors, as is established by the evidence of Mr. F. Gabler, of the firm of Loring Brothers & Co., a highly honorable and disinterested man.

With this avowed intention, made known in his first interview with Captain Lawrence, at the outset, he took him from his business, carried him on board the ship, *in his own boat*, which was ready manned awaiting him at the wharf, under the *pretext* of inquiring into a matter of the internal police and discipline of the ship, over which he had no jurisdiction, but really with the settled purpose of forcibly taking off a portion of the crew, to be sent on board the vessel of war "Chile."

Not only so, but it appears from the statement of the American consul, that the maritime governor had so far imposed on and deceived the governor of the province as to induce him to acquiesce in this scheme, and had actually, at this time, an order (a verbal order) from the intendente of the province, directing him to transfer the seamen from the Addison to the Chile; which order he concealed from the master of the whaler, lest a remonstrance on his part might induce the intendente to revoke the order, as he doubtless would have done had he been informed of the facts in time.

The subsequent conduct of the maritime governor is in accordance with the views and motives which he proclaimed at the outset, and his subsequent declarations such as might have been expected. But compare the statement and conduct of the maritime governor with that of the master of the whaler, if there were no other testimony in the case: which is the most probable? Here is a whaling vessel with a full complement of men, well equipped and supplied with all things necessary for the business, just commencing the voyage under the most auspicious and flattering circumstances, having fallen in with a school of whales and taken one in sight of the port, after having been for seven months without taking or seeing a whale. The men are forbidden to go ashore; the inconsiderable business of the ship (the delivery of a small quantity of oil, and the purchase of a stove) is despatched; the whale is cut into and secured; orders are given by the captain to weigh anchor and have all things in readiness to sail; he obtains his ship's papers from the consul, and her clearance from the custom-house officers, was hurrying his merchant to make out his accounts, and would have been off for his vessel in fifteen minutes, exulting in the prospect, almost the certainty, of freighting his vessel in a few days with the rich cargo for which he had sailed half around the globe, braving every hardship and danger, and which had before eluded his search, and which, if neglected for a few days only, might not again present itself for months, if ever. Is it probable, is it reasonable to suppose that a person in the situation of Captain Lawrence would fail to avail himself of this tempting opportunity? And for what? Why, for the purpose of entering into a plot so complicated that none but an adept in chicanery could have conceived, and yet so wicked that the wickedness is lost in its imbecility; which is nothing less than a scheme on the part of the master of the whaler to seduce the maritime governor into the commission of an apparently illegal act, in order that he might make a false claim against the government of Chile—a claim against a government situated many thousands of miles from home, relying, as it is supposed, upon the power of his government to enforce a claim so iniquitous, and which, to be considered even plausible, must involve in the guilt of perjury all those on board, who would be required to substantiate the claim.

And what is there in the history of the government of the United States, in its intercourse towards other nations, which would justify the suspicion that any man, however weak or wicked he might be, could, for one moment, entertain the hope of inducing that government to become a party to a transaction so disreputable? His excellency does justice, and no more than justice, to the government of the United States, when he says: "I know very well that in protecting the claims of its citizens, it acts upon principles of the purest justice." This is known to the whole world, and to no persons better than to the masters of American vessels. Its indulgence, its forbearance in asserting the just claims of its citizens, especially against States less populous and powerful than itself, is proverbial; and whatever cause of complaint, in this respect, there may have existed on the part of some of its own citizens, the government of the United States has certainly not, in any case, pursued a course which was cal-

culated to stimulate her citizens to make unfounded claims against friendly powers, relying on their government to enforce them.

If avarice is to be attributed as the motive of action on the part of Captain Lawrence, the temptation was to be found in the sea rather than on the land; amongst the numerous schools of whales which were congregated in the vicinity of Valparaiso, where, in a few lucky days, he might have expected to freight his ship with a full cargo, and return home richly rewarded for all his toils and privations, rather than to spend his time and means in laying the foundation of a claim which, even if just, could not be considered equal in value, as a matter of speculation, to a cargo of sperm oil, and which, according to the usual course of diplomacy in such cases, might require much time to adjust and settle.

But independently of the internal evidence growing out of the nature of the transaction itself, the statement of the master of the whaler is sustained and corroborated, in all its material facts, by the officers and several of the crew of the whaler, who, together with the master, made their statements under oath; and also by R. Loring, William W. Snelling, and F. Gabler, of the house of Loring Brothers & Co., Z. W. Potter, United States consul for Valparaiso, and John Keen; the latter of whom are gentlemen of character, whose testimony is given without interest or bias. If these disinterested persons are to be believed, it is impossible to believe the statement of the maritime governor when he attempts to justify himself by stating:

1st. That he repaired on board the whaler, accompanied by the captain, *in his own boat*, in the character of a mediator.

2d. On the mole, previous to embarking, he met the consul of the United States, to whom he stated the object proposed; and the captain, far from denying it, agreed with the maritime governor in the measure.

This statement is positively contradicted by both the American consul and the captain of the whaler.

3d. It being agreed upon to receive, on the next day, three seamen, the captain of the whaler not wanting a fourth.

4th. The maritime governor communicated the circumstances to the intendente on the same day, when there was no idea of reclamation by Captain Lawrence. And yet it is asserted that such was the intention of the captain of the whaler from the inception of the matter. Much stress is laid upon the supposed delay of the master of the whaler in making complaint to the consul. It is asserted that he went ashore immediately after the visit of the maritime governor to the whaler, and instead of there directing himself to his consul to complain of the supposed grievance, he awaits the sailing of the Chile, insists afterwards on not accepting the seamen, which, with *the desire of shunning* disagreeable controversy, had been offered to him in lieu of those taken off, in compliance with the agreement as before stated.

All of which is positively disproved by undeniable testimony. So far from the master of the whaler having applied to the maritime governor to go on board his vessel in the character of a mediator between himself and a portion of the crew, he, the maritime governor,

sought and required him to go on board, having previously obtained an order from the intendente for the transfer of the sailors, which he concealed, and which is inconsistent with the defence which he subsequently made. It is not true, as stated, that he informed the American consul of the object of his visit to the whaler.

It is not true, as stated by him, that the master of the whaler delayed making complaint until after the sailing of the "Chile," on the following day, but that no time was lost by the master of the whaler in laying his case before the consul; that within two hours after the occurrence he visited the consul on board the U. S. corvette Preble, then in port, and laid the case before him; that at an early hour next morning he visited the consul before he was out of bed, and requested his interposition and protection; that his object in calling on the consul, as is manifest, was to aid him in reclaiming the mariners in order that he might go to sea, and not in getting up a claim against the government of Chile. It appears that the maritime governor sought, as a pretext to defend his conduct, to discover some illegality in shipping the seamen; that he came with Mr. Péna, the secretary of the marines, to the office of the consul, for the purpose of examining the ship's papers, which proved to be regular; and he then, for the first time to the knowledge of the master of the whaler, stated that the seamen were removed with his approbation, which was flatly contradicted by him.

The bearing and manner of the two men, on this occasion, when face to face, was such as to leave no doubt of the facts of the case. According to the statement of the United States consul, the intendente frankly admitted that he issued the order for the removal of the seamen from the whaler to the "Chile;" stated that he had been deceived and misled by the statement of the maritime governor, and expressed his sincere regret at the occurrence; stated that if the "Chile" were in the harbor, the four men should *instantly* be restored to the Addison; and assured the consul, at the same time, that he had given, or would give, to the captain of the port, orders to have four men ready at any moment, to replace those taken off; and when the Chile returned, an offer was made, on or about the — day of —, 1850, by the direction of the intendente, to restore the four men to the "Addison." It is manifest that Governor Blanco was satisfied of the error into which he had been led by the misrepresentation of the maritime governor, which he did not attempt to conceal, but for which he was anxious to make all the atonement in his power.

In concluding this review of the facts, the undersigned begs leave to state that the character of Captain Lawrence appears to be irreproachable; and his conduct in this unfortunate affair was such as to meet the approbation of his countrymen at Valparaiso; and that his bearing in stating the case to the undersigned, when, in pursuance of the advice of the United States consul, he visited Santiago for that purpose, was that of a conscientious and honest man, acting under a sense of duty to his country, whose flag he considered had been insulted, through him, to his employers and to himself.

As an evidence of his scrupulous adherence to the truth, he omits to state an important fact, which is established by Mr. Gabler, to wit:

the declaration made by the maritime governor in the store-house of Loring Brothers & Co., to the effect that he intended to remove the seamen, because he either did not hear or understand the words, his knowledge of the Spanish language being limited. The course of the captain in declining to leave the port of Valparaiso until he should be able to lay all the facts of the case before the representative of his government residing in Chile, has met with the unqualified approbation of the undersigned; and, from the evidence now produced, all of which is herewith laid before his excellency, the undersigned has no doubt but that all the impressions heretofore made on his mind, injurious to the motives of Captain Lawrence, will be removed.

His excellency observes, "I cannot conclude this note without observing that there would have been no offence against the honor of the American flag in the conduct of the maritime governor, even if it were granted that it were such as represented by the captain of the whaler, because, as your excellency knows, it is a principle generally recognised, and nowhere more explicitly than in the United States of America, that merchant vessels, whilst lying in the territorial waters of a foreign nation, are subject to local jurisdiction.

"Private vessels of a state, which enter into the ports of another, are not exempt from local jurisdiction, except by express agreement, and within the limits designated by that agreement. (Wheaton, vol. 1, part 2, chap. 2, sec. 10, p. 151.)

"The act, therefore, of exercising jurisdiction over a foreign merchant vessel is not an offence to the nation to which the vessel belongs, nor, consequently, an outrage upon the honor of its flag. It is certain that this jurisdiction may be abused, as judges who administer justice on shore, in causes of foreigners submitted to them, might abuse theirs; but this would only give the right to seek pecuniary indemnification for a manifest injustice, and never constitute an international grievance," &c., &c.

It will be remembered by your excellency, that the case in which the above principles of law were involved was one of impressment—the impressment of mariners from the vessel of a friendly power, which entered an open port for the purpose of legitimate commerce, in a time of profound peace. It is conceded that the local jurisdiction attaches to private vessels upon their entrance into the ports of a foreign state, and that the complete power of a nation within its own territories is limited only by its own consent, expressed or implied; the implied consent being no less obligatory than that which is expressed. "This consent might, in some instances, be tested by common usage, and by common opinion growing out of that usage. A nation would justly be considered as violating its faith, although that faith might not be expressly plighted, which should suddenly and without previous notice exercise its territorial jurisdiction in a manner not consonant to the usages and received obligations of the civilized world." (Wheaton's Elements of International Law, part 2, chap. 2, p. 141.)

The views entertained by the government of the United States on this subject were fully expressed, on a recent occasion, in negotiating the treaty of Washington, by the American negotiator, who was at

that time, and now is, Secretary of State of the United States ; which were to the effect following : “ But the rule of law and the comity and practice of nations go much further than cases of necessity, and allow even merchant vessels, coming into any open port of another country voluntarily, for the purpose of lawful trade, to bring with her, and keep over her, to a very considerable extent, the jurisdiction and authority of the laws of her own country, excluding to this extent, by consequence, the jurisdiction of the local law.

“ A ship, say the publicists, though at anchor in a foreign harbor, preserves its jurisdiction and its laws. It is natural to consider the vessels of a nation as parts of its territory, though at sea, as the state retains its jurisdiction over them ; and, according to the commonly received custom, this jurisdiction is preserved over the vessels even in parts of the sea subject to a foreign dominion. This is the doctrine of the law of nations clearly laid down by writers of received authority, and entirely conformable, as it is supposed, with the practice of modern nations.

“ If a murder be committed on board of an American vessel, by one of the crew upon another or upon a passenger, or by a passenger upon one of the crew or another passenger, while such vessel is lying in a port within the jurisdiction of a foreign State or sovereignty, the offence is cognizable and punishable by the proper court of the United States, in the same manner as if such offence had been committed on board the vessel on the high seas.

“ The law of England is supposed to be the same. It is true that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of another, is not necessarily wholly exclusive. We do not so consider or assert it. For any unlawful acts done by her, while thus lying in port, and for all contracts entered into while there, by her master or owners, she and they must, doubtless, be answerable to the laws of the place. Nor, if her master or crew, while on board in such port, break the peace of the community by the commission of crimes, can exemption be claimed for them. But, nevertheless, the law of nations, as I have stated it, and the statutes of governments, as I have referred to them, show that enlightened nations, in modern times, do clearly hold that the jurisdiction and laws of a nation accompany her ships not only over the high seas, but into ports or harbors, or wheresoever else she may be waterborne, for the general purpose of governing and regulating the rights, duties, and obligations of those on board thereof ; and that to the extent of the exercise of this jurisdiction, they are considered as parts of the territory of the nation herself.

“ Your lordship will please to bear in mind that the proposition which I am endeavoring to support is, that by the comity of the law of nations, and the practice of modern times, merchant vessels entering open ports of other nations for the purpose of trade, are presumed to be allowed to bring with them, and to retain, for their protection and government, the jurisdiction and laws of their own country. All this, I repeat, is presumed to be allowed, because the ports are open, because trade is invited, and because, under these circumstances, such permission or allowance is according to general usage.

"It is not denied that all this may be refused ; and this suggests a distinction, the disregard of which may, perhaps, account for most of the difficulties arising in cases of this sort : that is to say, the distinction between what a state may do if it pleases, and what it is presumed to do, or not to do, in the absence of any positive declaration of its will. A state might declare that all foreign marriages should be regarded as null and void within its territory ; that on the arrival of a foreign vessel within its ports, all shipping articles, and all indentures of apprenticeship between her crew and her owners or masters should cease to be binding ; that a foreign father, arriving with an infant son, should no longer have authority or control over him.

"These and many other things equally irrational and absurd, a foreign state has, doubtless, the power to do ; but they are not to be presumed. It is not to be taken for granted, *ab ante*, that it is the will of the sovereign state thus to withdraw itself from the circle of civilized nations.

"It will be time enough to believe this to be its intention when it formally announces that intention by appropriate enactments, edicts, or other declarations.

"It is true that it is competent to the British Parliament, by express statute provision, to declare that no foreign jurisdiction of any kind should exist in or over a vessel after its arrival, voluntarily, in her ports. And so she might close all her ports to the ships of all nations. A state may also declare, in the absence of treaty stipulations, that foreigners shall not sue in her courts, nor travel in her territories, nor carry away funds or goods received for debts.

"We need not inquire what would be the condition of a country that should establish such laws, nor in what relation they would leave her towards the states of the civilized world. Her power to make such laws is unquestionable ; but, in the absence of direct and positive enactments to that effect, the presumption is that the opposites of these things exist. While the ports are open to foreign trade, it is to be presumed that she expects foreign ships to enter them, bringing with them the jurisdiction of their own government, and the protection of its laws, to the same extent that her ships and the ships of other commercial states carry with them the jurisdiction of their respective governments into the open ports of the world ; just as it is presumed, while the contrary is not avowed, that strangers may travel in a civilized country in a time of peace, sue in its courts, and bring away their property.

"A merchant vessel enters the port of a friendly state, and enjoys while there the protection of her own laws, and is under the jurisdiction of her own government, not in derogation of the sovereignty of the place, but by the presumed allowance or permission of that sovereignty. This permission or allowance is founded on the comity of nations, like the other cases which have been mentioned ; and this comity is part, and a most important and valuable part, of the law of nations, to which all nations are presumed to assent until they shall make their dissent known. In the silence of any positive rule affirming, or denying, or restraining the operation of foreign laws, their

tacit adoption is presumed to the usual extent. It is upon this ground that the courts of law expound contracts according to the law of the place in which they are made; and instances almost innumerable exist, in which, by the general practice of civilized countries, the laws of one will be recognised and often executed in another. This is the comity of nations; and it is upon this, as its solid basis, that the intercourse in civilized states is maintained."

The above extracts contain what the government of the United States regarded as the true principles of maritime law, which were acquiesced in by Lord Ashburton, the English ambassador.

From which it is evident that the entrance of the maritime governor on the deck of the *Addison*, for the objects and purpose with which he boarded her, was a trespass, a wrong, a usurpation of power, and an invasion of the jurisdiction of the United States, which cannot be justified by the laws of Chile, or by the laws of nations, and which will not for one moment be countenanced or sanctioned, as the undersigned is firmly persuaded, by the government of Chile.

The right of visitation and search is strictly a belligerent right, allowed by the general consent of nations in time of *war*, but it is not allowable in time of peace. As to the right of impressment, the United States have manifested their opposition to its assertion, in a manner which is known to the world, as it was one of the principal objects of the last war between them and England; and it is believed that no state capable of resisting would, at the present day, submit to this odious practice. It is most certain that the United States will not submit to it. The rule which that government adopted more than fifty years ago is, that "the vessel being American shall be evidence that the seamen are such;" "that, in every regularly documented American merchant vessel, the crew who navigate it will find their protection in the flag which is over them."

The French citizen, if forced to leave the *Addison*, and compelled to enter the naval service of Chile against his consent, has an undoubted right to the protection which would be due to an American citizen. If, unfortunately, and which the undersigned cannot believe, the government of Chile should adopt as its own the acts of the maritime governor, refuse to make proper reparation, and retain the Frenchman in her service contrary to his wishes, it may become the duty of the undersigned to address his excellency particularly on this part of the case; in which event, he would feel bound to act in concert with the French minister near this government, being a case involving the rights of a French citizen.

There is one branch of the subject which the undersigned has intentionally omitted to discuss at the present time, and that is, as to what amount of compensation is due to the master and owners for the detention of the vessel; because he did not desire, in this communication, to divert the attention of his excellency from the principles involved in the case. The undersigned cannot doubt but that the government of Chile will disclaim the unwarrantable acts of the maritime governor, and disavow the principles upon which they can alone be dependent; discharge the French citizen from its service, if he is de-

tained against his will; and agree to make such compensation to the owners and master of the whaler as shall be found to be just and proper.

The undersigned sends herewith, for the information of his excellency, copies of the following papers, to wit:

The protest of the master of the Addison, marked —; the sworn statements of the first and second officers, marked —; of seven seamen, marked —; of Z. W. Potter, esq., marked —; of R. Loring, marked —; of William W. Snelling, marked —; of F. Gable, marked —; &c., &c., &c.

In conclusion, the undersigned will adopt for himself the sentiments expressed by a distinguished negotiator on a memorable occasion: "It behooves the authorities of our two governments well to guard themselves against establishing by their diplomatic intercourse false precedents and principles; and that they do not, for the purpose of meeting a passing difficulty, set examples which may hereafter lead to unhappy consequences."

The undersigned avails himself of the occasion to reiterate to Señor Varas assurances of the high regard and distinguished consideration with which he has the honor to be, very respectfully, his obedient servant,

BALIE PEYTON.

His Excellency SEÑOR DON ANTONIO PARAS,

Minister of State and Foreign Relations of Chile.

[No. 20.]

LEGATION OF THE UNITED STATES,

Valparaiso, Chile, June 21, 1851.

SIR: I have the honor herewith to enclose a copy of the correspondence with the minister of foreign relations on the subject of the impressment of four mariners from the United States whale-ship Addison, whilst she was lying in the port of Valparaiso on the 15th of October last. I also send copies of the depositions, &c., in order that you may have the whole case before you as I presented it to the minister of foreign relations. Should I receive his reply to my last note in time, you shall be furnished with a copy of that also. * * * Considering the case of the Addison as one of a character too serious to be passed over lightly, I have endeavored in vain thus far to obtain proper satisfaction; and as there is little probability that this government will change its position or retrace its steps from anything I can advance, I submit the case to you, hoping to receive your instructions on the subject, and shall so inform the government here, unless the minister's next note should prove satisfactory, of which I have very little expectation.

I have the honor to remain, very respectfully, your obedient servant,

BALIE PEYTON.

Hon. DANIEL WEBSTER,

Secretary of State of the United States, Washington.

[No. 1.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Valparaiso, October 16, 1850.

SIR: I deem it my duty to lay before your excellency an occurrence which took place in this port yesterday, on board of an American whaler, "Addison" of New Bedford. The Addison arrived here on Saturday last; yesterday the captain of the port of Valparaiso repaired on board of the Addison, and took out of that ship *four seamen* (three Chilenos and one Frenchman) who had been regularly shipped before the American consul at Talcahuano but a few days before.

The captain of the port ordered them immediately on board of the Chilean man-of-war "Chile," then under sailing orders, against the remonstrance of Thomas H. Lawrence, the master of the whaler. The Chile has sailed with the four men mentioned on board. This occurred about 2 p. m. At 4 p. m., whilst dining on board of the Preble, I was informed that Captain Lawrence desired to see me officially; he was introduced into the presence of Commander Glynn and myself, and briefly narrated what had just occurred. I was happy to say to him that his conduct was perfectly correct in not resisting the authorities of the port, and informed him that I would give the matter my prompt attention, by calling on the Chilean admiral, Governor Blanco. I did so this morning, and had a long interview with his excellency Governor Blanco, the intendente of Valparaiso, in company with Señor Plena, the secretary of mariners.

His excellency informed me that the difficulty arose from misinformation that he had received from the captain of the port, and expressed great regret at the occurrence, at the same time manifesting an earnest desire to retrace his steps. I expressed to the intendente that I entertained not a doubt of the fact that he had been misinformed, but that I felt it to be my duty to communicate the facts to his excellency the minister plenipotentiary and envoy extraordinary of the United States near this government, whose especial province I conceived it to be to entertain questions of the magnitude which an act of this kind involves.

I have the honor to remain your excellency's most obedient servant,

Z. W. POTTER,

U. S. Consul.

His Excellency BALIE PEYTON, *Minister Plenipotentiary
and Envoy Extraordinary of the United States, at Santiago.*

VALPARAISO, *October 16, 1850.*

DEAR COLONEL: I have this day addressed you an official letter relative to the impressment of four seamen from the American whaler Addison.

I have done so because I deemed it my duty, and to escape censure from my government by remaining silent; but I beg the privilege of addressing you a private and friendly letter upon the subject also.

I have had a long and interesting interview with Governor Blanco,

in which he manifests such a *spirit of regret* at the unfortunate occurrence, and proposes so promptly, and in so manly a manner, to make the *amende honorable*, without compromising his dignity, that I feel it equally my duty to inform you of it. He is mortified beyond expression at being so sadly imposed upon by the misrepresentations of the captain of the port, (who told the admiral that the men left the "Addison" by the captain's consent,) and he assures me that if the men were here he would promptly restore them to the ship. He (the admiral) informs me that he has four men ready at any moment to go on board, and is willing and ready to pay any loss for the detention of the ship, and to place her, as far as he can, in the condition in which she came into port.

I have every reason to believe that the regret of the governor is sincere and profound. When an error is *frankly* acknowledged, I am ever disposed to palliate the fault, and forgive the culprit. I am sure similar feelings actuate your own bosom.

The captain remains in port until I hear from you. What shall I advise him to do? I write this, colonel, because I wish to do justice to sincere contrition, even when it comes from high places.

I hope to have the pleasure to hear from you by return mail.

I remain, as ever, yours,

Z. W. POTTER.

[No. 2.]

VALPARAISO, October 21, 1850.

RESPECTED SIR: I beg to lay before you the nature of my principal grievance, caused by the detention of my ship through the impressment of the four men now in question.

I came into this port on Saturday the 12th of October, the present month, towing in with me a sperm whale, which has yielded sixty-six barrels of oil. I came in here for the purpose of landing a few casks of oil which I had sold at Talcahuano, deliverable here. On Tuesday, all my business being done, and cleared from the custom-house and captain of the port, I was on the point of sailing, when I was detained, as represented in another communication. The interest of the property now under my charge, insurance on the same, and real expenses incurred by this unfortunate affair, are but minor considerations, compared with my prospects of taking sperm oil, could I have gone out as I had intended. Certificates of some of our merchant ship-masters (which I have taken the liberty of enclosing) may convince you, sir, that my prospects are as I represent them.

It is an established opinion among ship-masters in the whaling business, that, on the full of the moon, whales collect in with the land; and the fact that sperm whales may be and are seen for five or six days successively, and then are not seen again for a number of months; that in five or six days we could with ease take four hundred barrels of oil, after which, if the whales left the ground, (which I consider they are sure to do,) we could be contented to wait their

return ; the fact that most of the oil (amounting to nine hundred barrels) I have now on board was taken by spells in this way on this coast ; that I have taken from one hundred and twenty to one hundred and forty barrels of oil as many as three different times this voyage in one day.

Sir, these facts, I hope, may go to prove that the damages to all concerned in my ship are severe, and that the estimate of such damages is by no means an exaggerated computation. Less than a year since I took two hundred and twenty barrels of oil off Talcahuano, in sight of the land, as fast as I could take care of it, and then saw no more whales on that ground after.

The business is a lottery ; and missing an opportunity like the one past and passing, during my detention here, the injury can hardly be estimated. The whale I towed in here, computing its value as I sold oil here, is worth \$2,728 ; and had it not been very rough weather when I took that one, I do not entertain a doubt that I should have taken another, as there were more in sight. I have been thus tedious, sir, (as you may not well know the nature of this uncertain business, and may therefore judge the damages settled upon this matter an unjust calculation,) to show as far as possible upon what grounds I base my calculations, and that the damages can only be covered by allowing a moderate share of good luck.

I do, therefore, as representing my owners and ship's company, feel not only insulted, but materially injured in a pecuniary point of view. My indignation at this proceeding hardly exceeds that of all other Americans here who have become acquainted with the affair ; and I can only humbly hope that, through your interference in this matter, both protection to the flag of our Union, and redress for the present injury, may be obtained.

I would furthermore solicit information as to whether it is necessary for me to remain here with my ship, or can I proceed on my voyage ? For which information I wait with all patience, sir, your reply.

Very respectfully, yours,

T. H. LAWRENCE,
Master of Whale-ship Addison.

Hon. BALIE PEYTON,
Minister, &c., &c., Chile.

[No. 3.]

UNITED STATES CONSULATE,
Valparaiso, October 28, 1850.

MY DEAR SIR: Allow me to introduce to you Captain Lawrence, master of the American whaler "Addison." He goes to see you at my request.

Yours, most truly,

Z. W. POTTER.

His Excellency BALIE PEYTON, &c., &c.

[No. 4.]

UNITED STATES CONSULATE,
Valparaiso, October 27, 1850.

SIR: I had the honor to receive by yesterday's mail a letter from your excellency bearing date the day previous, to which I beg leave to reply without delay. Your excellency calls my attention to the fact of having been favored with a reply from the "Minister of Foreign Affairs, Chile," to your communication of the 19th instant, relative to the recent case of impressment in this port, immediately after the despatch of your letter to me of the 24th. You are pleased to state that "his excellency the Minister of Foreign Relations seems to feel himself called on to controvert the statement of facts made by you (me) upon the authority of the captain of the '*Addison*,' and to insist that the captain of the port went on board of said vessel as a mediator between the captain and a portion of her crew, and at the request of both parties, and that the captain of the '*Addison*' agreed to exchange the four seamen for three others, (not wanting a fourth,) and *voluntarily* transporting the four men from his vessel to the '*Chile*,' in his own boat, and then, after the departure of the '*Chile*,' refused to accept the three seamen, with the view of making a false claim upon the government of Chile. And, moreover, that his excellency the Minister of Foreign Affairs further states that the captain of the port informed you of his intention to visit the '*Addison*,' and the purpose of his visit, immediately before he left the wharf, in company with Captain Lawrence, and in his boat, for that purpose."

I know of no better mode of replying to the contradiction, which, it seems, the Minister of Foreign Relations has given to my communication of the 16th, and to the respective interrogatories which your excellency has been pleased (and most properly) to propound to me, than to give your excellency a succinct history of the affair so far as it has come to my knowledge, and of my official connexion with it.

On the day on which the difficulty occurred, (I think it was about 3 p. m., or a little later,) whilst passing the mole, in going on board of the United States sloop-of-war *Preble*, I heard some one call me, and, on turning, found that Captain Lawrence wished to speak to me. He observed to me that the captain of the port (who was standing by and within hearing) had received a message from some three or four Chilenos, on board of his ship, who had complained of bad treatment and a scarcity of provisions, and that he was going on board to see them. I remarked to Captain Lawrence, in passing, "Very well, captain, if the captain of the port wishes to pay your ship a visit, accompany him, treat him politely, and show him every necessary attention, and if you need my services, call upon me," or words to that effect.

I think the above were the identical words I used, not imagining, *for one moment*, that he intended exercising any unwarrantable authority on board, but that if he discovered any grounds for complaint, he or Captain Lawrence would promptly call my attention to it, as United States consul.

I had never heard of any complaint before, on board of the "*Addison*." Between the captain of the port and myself not a word of

conversation had passed. It was but for a moment that I stopped, and the conversation that took place was entirely between Captain Lawrence and myself. The *captain of the port never opened his lips to me, nor I to him*. He stood some four feet distant, but doubtless heard, if he understood (being but little acquainted with English) what I said to Captain Lawrence. They were then on their way to the "Addison," and, as your excellency may perceive, my meeting with them was wholly accidental. About 5 or 6 p. m., whilst dining with Commander Glynn, the officer of the deck informed me that the captain of an American vessel wished to see me on official business. Commander Glynn promptly replied, "Ask him in." In a moment Captain Lawrence entered the cabin, and remarked that he was sorry to interrupt me, but that he felt it his duty to call my official attention, as soon as possible, to a very high-handed act which had just been committed by the captain of the port, on board his ship. I immediately inquired, "What is that, captain?" "Why, sir," he replied, "the captain of the port has just been on board my ship and taken out of her four of my men—three Chilenos and one Frenchman—whom I shipped a few days ago before the American consul at Talcahuano, and has put them on board of the man-of-war Chile. I remonstrated against it, and told him that he could not do such an act as that; that it was the place of the American consul to act in such cases, and to say whether they ought to be discharged or not. He, the captain of the port, immediately replied, that the American consul had nothing to do with them; they were Chilenos, and he had the right to take them out of the ship, adding that they must be taken to the man-of-war at once, and ordered the men to get their clothes." Captain Lawrence (as he then stated, and still states) discovering that all remonstrance was vain, remarked, "Well, sir, if you say I must give them up, and it is the law of Chile, and your order, why, sir, I must obey it." The captain of the port then observed, "It is my order, and you must take the men in your boat."

Captain Lawrence replied, "very well, sir," and complied with the order, and sent one of his officers with them to the Chilean man-of-war. After hearing, in detail, Captain Lawrence's statement, I asked him, "Captain, did you make any resistance?" He replied, "No, sir, I did not; I thought it might be the law of Chile, and I obeyed his order, and determined to report the case at once to you." I then observed to him, "I think you have done perfectly right in offering no forcible resistance," in which opinion Commander Glynn expressed his concurrence; adding, at the same time, "it is just what I would have done under the same circumstances." I then remarked to him, "Well, captain, I will call the attention of the authorities of Valparaiso to this extraordinary proceeding early in the morning, (it was then near night,) and report the case without delay to the American minister at Santiago."

Captain Lawrence then left the "Preble," and I saw no more of him until early next morning (about 6 o'clock) whilst in bed, when I was informed that Captain Lawrence wished to see me *immediately*. I dressed in great haste and received him. He immediately remarked to me, "Mr. Potter, the man-of-war Chile is under sail, and is taking

my men to sea." I replied, "Hardly, captain, you must be mistaken; they surely have not done such an act as that. Perhaps they have put your men on board the little Chilean man-of-war lying in the harbor." "No, sir, (he replied;) I tell you they hurried the Chile off this morning before it was light, or a little after, and they have carried my men off." I then observed to him, "I am very sorry to hear it. This is going to prove an ugly affair to this government, and, as soon as I despatch my breakfast, I'll call upon Governor Blanco to know by whose authority it has been done."

At half-past nine, a. m., I called upon the secretary of marines, Mr. Peña, who, so early was my call, was, I believe, either just rising or at breakfast, as I waited for some time in his parlor before he made his appearance. I called thus early because I wished not to lose a moment in hearing the meaning of this strange proceeding. After apologizing for my early intrusion, I at once laid the whole case before him, and expressed my regret at the unfortunate occurrence, and my unqualified disapproval of the captain of the port's course, and inquired if Admiral Blanco had given it his sanction and issued such an order. Mr. Peña replied he had; but added, that he (Mr. Peña) understood, from the captain of the port, that the four men had not been regularly shipped, or that the captain of the whaler had consented to their discharge. I remarked to him that Captain Lawrence not only denied that *in toto*, but, on the contrary, remonstrated, in the most earnest manner, on board of the "Addison," against the conduct of the captain of the port, of which he had positive and abundant proof. "Well," Mr. Blanco [Mr. Peña] remarked, "that is singular; suppose we go and see the governor about it;" and immediately repaired to his residence. We obtained, without difficulty, an interview with his excellency, and the whole case, as viewed and stated by me, was laid before him, through the kindness of Mr. Peña, who interpreted for me. His excellency, upon the case being stated so fully and clearly in detail, seemed to be much surprised; and frankly confessed that he had acted from the information he had received from the captain of the port, and expressed his regret at the occurrence, and told me that, if the Chile were in the harbor, the four men should be instantly restored to the Addison; assuring me, at the same time, that he had given, or would give, to the captain of the port, orders to have four men ready at any moment to replace them. He frankly admitted that he had given the order to have the four men removed to the Chile, but explained his course by saying that the captain of the port had misrepresented the facts to him.

I observed to him, that from the facts before me, I then took occasion to inform his excellency that I entertained not a doubt of that; but I felt it my imperative duty to lay the case, without delay, before the American minister at Santiago, as the act involved one of those grave questions about which, as a nation, we were exceedingly tenacious. He seemed to regret that necessity, and again remarked that he would have four men ready for the captain of the whaler at any moment.

When I assured him that Captain Lawrence never assented, *in any*

manner or form, to their discharge, as the captain of the port had represented—unless it was attempted to construe into acquiescence and consent the fact that they were taken on board of the man-of-war in Captain Lawrence's boat, which was done (it is true) by the order of the captain of the port; which order Captain Lawrence obeyed, because he thought it best, or that he was bound (after having been told it was the law of Chile) to obey his order—his excellency Governor Blanco expressed the profoundest surprise and mortification. Mr. Peña was present during the whole interview.

After closing my interview with Admiral Blanco, I repaired to my office. In a short time Mr. Peña, accompanied by the captain of the port, came in, and there met the captain of the Addison. Mr. Peña, whose sagacity saw at once the blunder that had been committed, and evidently desirous of extricating the captain of the port from his dilemma, immediately inquired of me whether the four men had been regularly shipped. By referring to the ship's papers, I found they were regularly shipped. Mr. Peña then remarked to Captain Lawrence, that the captain of the port had said he (Captain Lawrence) assented to their discharge; which he (Captain Lawrence) flatly denied, before the captain of the port, in my presence. The manner of the captain of the port's explanation of the facts, his confused and bungling narratives, not only satisfied the undersigned that there was something wrong in this business, but convinced Mr. Peña also; for he (Mr. Peña) assured me afterwards that the captain of the port's manner in my office satisfied him (Mr. Peña) that all was not right.

Mr. Peña, subsequently—I believe upon every occasion upon which we conversed on the subject afterwards—ascribed the whole difficulty to the misrepresentations of the captain of the port. In truth, there is something wrong. Why should the captain of the port, at one time, urge, in justification of his conduct, that the men were not lawfully shipped, and that he, consequently, had a right to take them out? He no sooner finds they were regularly shipped than that plea is abandoned. At another time, he urges the plea of ill-treatment, and want of sufficient food on board; which charge was clearly proved by his own countrymen, (a part of the crew on board of the Addison,) to be false; and that ground is also surrendered. And, finally, in a forlorn effort to save himself, he falls, for defence, upon what he calls the acquiescence and consent of the master of the "Addison" to their discharge.

I think a thorough examination of the conduct of the captain of the port in this business will satisfy your excellency that it is not only wholly indefensible, but that he has resorted to the most unworthy subterfuges in his effort to escape from the egregious blunders that he has committed. That Admiral Blanco had the case represented to him in the most distorted colors by the captain of the port, I have not a doubt. His excellency, (Admiral Blanco,) in his official intercourse with me, has uniformly given me too many proofs to question the sincerity of his kind regard and respect for the rights of American citizens. He no sooner discovered the mistake that had been made, than, in the most frank and manly manner, he offered to repair the error as fast and as far as possible.

Your excellency will therefore perceive, from the narrative of facts which I beg leave to submit to you, that have come to my knowledge, touching this unfortunate affair, that I have virtually answered the several inquiries which your excellency was pleased to propose to me in your last communication. In my opinion, the following facts can be established by incontestable evidence:

1st. That, so far from the captain of the port going on board in the character of a mediator, or at the request of Captain Lawrence, it is wholly untrue.

2d. That his conduct on board was, in the face of evidence there adduced, high-handed and arbitrary.

3d. That so far from the four seamen being voluntarily given up by Captain Lawrence, they were removed against his consent and earnest remonstrance, and by the positive order of the captain of the port.

4th. That the captain of the port never informed me that he intended going on board of the "Addison," nor the object of his visit; but Captain Lawrence did, in the accidental manner which I have explained.

5th. That the most gross injustice is done to Captain Lawrence in ascribing to him delay in laying the case before me, which he did in less than two hours after the impressment occurred, and some twelve hours before the Chile sailed.

6th. That there was an order from Admiral Blanco to transfer the four seamen to the man-of-war "Chile."

I am unable to say whether the four seamen expressed a wish to be transferred from the "Addison" to the Chile; that question, I presume, Captain Lawrence will answer you in person.

I shall endeavor to-morrow to obtain a copy of the order given by Admiral Blanco; if successful, your excellency shall receive it by the succeeding mail.

You ask, in your last communication to me, "whether, from all you have seen, heard, and believe, in relation to the matter, Captain Lawrence is acting in good faith; or is he endeavoring to force a false claim against the government of Chile?" I beg leave most unequivocally to reply, that I believe he is acting in good faith, but that I think he *greatly* overestimates the damages he has sustained. He says he can demonstrate to you what he has lost by detention; but I think he cannot urge that plea with much force, since Governor Blanco offered, within twenty-four hours afterwards, to replace the men and get him off to sea.

I have advised him to repair to Santiago to lay the whole case, *ore tenens*, before your excellency, and to take your excellency's counsel in the premises.

He sets out in the morning for the capital.

I have the honor to remain your excellency's most obedient servant,

Z. W. POTTER,
United States Consul.

His Excellency BALIE PEYTON,

Envoy Extraordinary and Minister Plenipotentiary

United States of America, at Santiago.

[No. 5.]

CONSULATE OF THE U. S. OF AMERICA,
Valparaíso, November 5, 1850.

This day personally appeared before me, Z. W. Potter, United States consul for the port of Valparaíso, in the government of Chile, at the office of the United States consulate, Thomas H. Lawrence, master of the American ship "Addison," now lying at anchor in this harbor, who, being duly sworn upon the holy Evangelists of Almighty God, made oath and states as follows, to wit:

That the ship "Addison" is employed as a whaler, and belongs to the port of New Bedford, in the State of Massachusetts, one of the States of the United States of North America, and is owned by one Isaac B. Richmond, of New Bedford; and that Thomas H. Lawrence was master of the same at the time of her sailing, on this her present voyage, from the said port of New Bedford, and is at present master; that I, the said Thomas H. Lawrence, sailed from the said port of New Bedford on the seventeenth day of August, one thousand eight hundred and forty-eight, for the purpose of procuring oil in the Pacific or other oceans; that I am and have been master of said ship, only being employed by the said Isaac B. Richmond, in the capacity of master, for the consideration of a certain proportion of the proceeds of the voyage, on her return to the said port of New Bedford; I have no further interest in the said ship than above stated. That on the twenty-fifth day of January, one thousand eight hundred and forty-nine, I passed Cape Horn, and entered the Pacific ocean; that I cruised in the said ocean up to the nineteenth day of September, (time spent in intermediate ports excepted,) when I made the port of Talcahuano, for the purpose of procuring supplies for said ship, carrying into said port of Talcahuano nine hundred barrels of sperm oil, which I had taken since I entered the Pacific ocean. That by desertion and otherwise, I lost several of my men at said port of Talcahuano, in whose places, before Wm. Crosby, United States consul for the port of Talcahuano, I shipped, among others, Marcus John, Anare Fuentes, Lorenzo Conteabro, Chileans, and one Adoncio Francisco, from the island of Martinique, (West Indies,) who did severally contract and agree with me, Thomas H. Lawrence, for considerations, terms of time, as set forth by the shipping articles of said "Addison," being produced by me this day, before the United States consul at Valparaíso; that on the ninth day of October, one thousand eight hundred and fifty, I sailed from the said port of Talcahuano, on a cruise, intending to touch at the port of Valparaíso for the purpose of landing to Loring Brothers & Co. a quantity of oil which had been contracted for at the said port of Talcahuano, by their agent at said place, deliverable at Valparaíso, alongside of the said ship "Addison," (the said ship "Addison" not anchoring to deliver said oil, unless bound by law to do so,) and for the purpose of obtaining a cooking-stove for the use of said ship; on the twelfth day of October, one thousand eight hundred and fifty, being then twenty-five miles, or thereabouts, distant from Valparaíso light-house, I saw sperm whales, gave chase to them, and succeeded in taking one, being the

first I had taken for seven months previously. After securing the said whale alongside of my ship, I found the water so bad, and the sea so rough, as to render it unadvisable to attempt to cut into said whale. I ran in for the harbor of Valparaiso, and was induced by rough weather outside, and the consideration of sooner and much more comfortably taking care of my whale, to bring my ship to an anchor in the harbor of Valparaiso; which I did at 4 p. m. on Saturday, the 12th day of October, one thousand eight hundred and fifty, not intending to stay longer than was necessary to deliver the oil before mentioned to Loring Brothers & Co., and get my stove on board; having on board my ship, at the time of anchoring in the said port of Valparaiso, a full complement of thirty-one men as the crew of said ship, and a passenger, viz: one John Keen, from Talcahuano to said port of Valparaiso. When I left the ship "Addison" to go on shore in the said port of Valparaiso, I gave orders to my first officer to allow no man to put his foot on shore upon any pretence whatever, unless by my special order—remarking to him to cut into the whale the day following, which was Sunday, and that I should do my business with all possible despatch, and should be able to get to sea, so as to lose no time, inasmuch as that would engage the crew until we could be again on our whaling ground, which I could, with a moderate fair wind, be, in three hours after weighing anchor. After leaving the above mentioned order, I took passage with Mr. Russell Loring and came on shore. On Sunday, the thirteenth day of October, my first officer, with the help of a full crew, cut into the whale aforementioned.

On Monday the stove was put aboard said "Addison," and, on Tuesday morning following, the oil consigned to Loring Brothers & Co. was delivered, and then I gave my orders to my first officer to be ready for sea in the afternoon, same day, as I should be able, as I thought, to get away early on Tuesday morning, after the office of Z. W. Potter, United States consul, was open. I went to said office to procure my papers, and did procure them; after which I took my leave of the consul, and, about one o'clock same day, went down to the store of Loring Brothers & Co., where I was immediately informed by Mr. Russell Loring that he, the said Mr. Russell Loring, had cleared my ship from the custom-house and from the captain of the port, giving me, at the same time, my clearance. I then immediately requested Messrs. Loring Brothers & Co. to close and settle my account with them, for that I wished to proceed to sea as soon as they could settle with me; whereupon W. W. Snelling, a clerk in the house of Loring Brothers & Co., remarked that it would not take more than fifteen minutes. As I, with Mr. Loring and Mr. Snelling of said house, was settling my account, the captain of the port of Valparaiso came into the said store of Loring Brothers & Co. some time between one and two o'clock p. m., and inquired if the captain of the "Addison" or whaler was there. Mr. Gabler, of the same house, a member of the firm, replied in the affirmative, and pointed me out to the captain of the port. The captain of the port then asked me, in the presence of the said Messrs. Loring, Sneller, and Gabler, if I had four Chilenos on board of my ship. I replied, I had,

I thought, double that number. He, the said captain of the port, then informed me that there had been a complaint entered to him, the said captain of the port, by four of my men, Chileans, and that I must go on board with him. I was, indeed, surprised at this information, as I had never heard any complaint before, nor seen any signs of dissatisfaction among my crew, but received my first information of said complaint from the said captain of the port himself, at that time in the said house of Loring Brothers & Co., in the hearing of the above-mentioned W. W. Snelling, Russell Loring, and Mr. Gabler. Mr. Gabler then asked said captain of the port if he could not go on board and see about the complaint, as I was busy in closing my accounts with them, the said house of Loring Brothers & Co. The said captain of the port then replied, No, that I must go on board with him. I, therefore, left my business, and immediately went down to the wharf in company with the said captain of the port, in his boat. Whilst on my way to the boat, I accidentally met with Z. W. Potter, United States consul, when I told him, the said consul, that the captain of the port said he had received a complaint from four of my crew, and that he had come for me to go on board with him to answer to it. The conversation which then took place was entirely between the said Z. W. Potter and myself, not a word having passed between the said Z. W. Potter and the captain of the port on the subject. Mr. Potter then replied to me, "Very well, captain, if the captain of the port wishes you to accompany him on board, do so, treat him politely, and show him every necessary attention, and if you need my services call upon me." The said captain of the port and I then went down to the landing, where we immediately embarked for the "Addison" in his (the captain of the port's) boat, pulled by four men.

Immediately upon my arrival on board of the Addison, I asked my first officer what the trouble was on board? He replied, none that he was aware of; that all hands were seemingly contented. I then told him that the captain of the port said there was a complaint made by four of our men, Chileans, that they had not enough to eat. He, the first mate, replied that that was the first he heard of it, and that no complaint of any kind had ever come to his (the first mate's) ears. I then asked the said captain of the port into my cabin, and asked him to take wine with me, which he refused; after sitting a few minutes, the said captain of the port and myself went upon deck, when I asked him, the said captain of the port, if he knew the men that had entered the complaint. He, the said captain of the port, then spoke to his own boat's crew, who called upon the quarter-deck the aforementioned seamen, and he, the said captain of the port, talked with them in Spanish. I had never heard any complaint from any of my crew, directly or indirectly, previous to hearing it from the said captain of the port; neither did I know who had made such complaints until they were called aft upon my quarter-deck, by the said captain of the port, through his boat's crew.

After a few minutes' conversation with the said four seamen, the said captain of the port said to me, "These men say they don't get enough to eat, and that they won't go in your ship, and you must discharge them." After remonstrating with the said captain of the

port to no effect, I called along some four or more of my men, and clearly proved to the said captain of the port that the complaints which he, the said captain of the port, represented to me, were utterly groundless, and that there had been always food enough cooked; that since having left the port of Talcahuano, there had been several times food thrown away, on account of having been improperly cooked; but he, the said captain of the port, seemingly wanting no proof of any kind, insisted only upon their discharge. The four men then, for the first time, said they were kept at work night and day. I told the said captain of the port it was true they had to work a part of the day and a part of the night, but not all day nor yet all night, for they were allowed from six to six hours and a half sleep each night—the same as my officers—when boiling out a whale; that, when we have no whales, they always get half of the day, and two-thirds of the night for themselves to sleep. But I received no satisfaction or answer from the said captain of the port; but he, the said captain of the port, went on to say that “these men say it will be the same way when you get to sea, and you must discharge them.”

I then told the said captain of the port, I could prove it had not been as those four men complained; and that, even were it as represented by them, it was their own fault, for neither they nor any other of the crew had ever entered any complaint to me, nor any of my officers, to the effect that they were short of provisions, or that it was badly cooked. I then remarked to the said captain of the port, “you may call all my men up, and they can convince you.” I confessed that the food might have been insufficiently cooked, as my old stove was out of order, and called his (the said captain of the port’s) attention to a new stove that I had then on my deck, remarking that, in future, doubtless, the food would be perfectly cooked, if it had not been before, as I intended putting up said stove as soon as I finished my work with my whale; also, that my cook had been with me but a few days only, and I knew not whether he could fill his station or not; if he could not, I would put some one else in his place, for that the meat cooked for my men and myself was cooked in the same coppers, at the same time. To all this he again replied, “they say it will be the same way if they go to sea with you.” Anxious to keep my men, I then told the said captain of the port, “If any of my men have any complaint to make, they must make it to the American consul;” when the said captain of the port interrupted me, saying, “the American consul has nothing to do with these men; they are Chileños,” and repeated, “the American consul has nothing to do with them.” I then observed to the said captain of the port, that there was one who said he was a Frenchman, born in the West India islands, and he is on my articles as such. What have you to do with him? The said captain of the port then held conversation with the four men in question, (in Spanish;) when his answer was as before: “they say they won’t go in your ship.” I then said they must go, if they can prove no ground for complaint. He then said, “No; if they say they won’t go, I cannot force them to go.” I then asked the said captain of the port if it was according to the law of Chile that men could leave by merely saying and declaring that they would not

go in a ship—whether the captain was bound to discharge them. The said captain of the port replied, that if they did not like to go, they could not be forced to go. After repeatedly remonstrating with him in the above manner, and endeavoring to point out to him of what great importance it was to me, at that time, to keep my men, and get to sea, as I might lose one-half of my crew by detention, and telling him that I was only detained by him, I told him also, that if he obliged me to let these men go, I should, perhaps, be detained a week to get three more, (as I did not really need a fourth,) which I think very difficult to get for a whaling voyage; and, moreover, these men are all in debt to the ship; whereupon the said captain of the port remarked, “I will pay their debts, and do all I can to assist you in getting more men;” which aid I thought it not advisable to accept. Finding argument of no avail, I then told him, if it was Chile law, and he said I must discharge these men, being ignorant of said law, I of course must obey your order, stating, at the same time, they have no grounds on which to claim their discharge, as you yourself plainly see; but, if you still persist that I must discharge them, I must, of course, submit; remarking to my first officer, George H. Cash, that it was strange law indeed. He, George H. Cash, (my first officer,) replied it was, but he saw no other way but to submit to it. I then asked the said captain of the port what he was going to do with them? He replied, that he was not going to let them go on shore, but was going to put them on board the Chilean man-of-war “Chile.” I then asked him how they were to get there? He replied they must go in your boat. I then repeated, “If you say, sir, that I am obliged to discharge these men, and put them on board your man-of-war in my boat, I obey the order, but see no reason or justice in it.” The said captain of the port then ordered them to get their things, telling them to be quick; and they brought their things, put them into the boat, and my second officer (Francis Fisher) with three of my men, pulled them to the man-of-war “Chile,” at about 3 p. m.; the said captain of the port and myself preceding them in his (the said captain of the port’s) boat. After waiting on board the “Chile” about half an hour, I proceeded to the shore in the said captain of the port’s boat. Considering myself bound, as an American ship-master, to make known the circumstances to the representative of my country; as, also, in duty bound to my employers, and all concerned in the ship and voyage, to make complaint against such illegal proceedings, I immediately went to the house of Loring Brothers & Co., and informed them of the affair, and inquired if they could tell me where the American consul was, expressing my intention of immediately making complaint to him officially.

I soon found he was on board the United States sloop-of-war Preble, and immediately took a boat, and, accompanied by Mr. John Keen, of Talcahuano, went on board the Preble, where I found the consul at dinner. I sent a message to Mr. Potter, the consul, that I wished to see him on special business, and was admitted into the cabin of the Preble, where I laid the whole case before him, Commander Glynn, and one other gentleman who was present at dinner. Mr. Potter told me that he would give the affair his earliest attention in the

morning, as it was then near night. I then went on shore, and early next morning I left word on board the Preble that the Chile was getting under way for sea, with my men on board. I immediately repaired to the house of the United States consul, and found him in bed; I immediately informed him that the Chile was getting under way, with my men on board. He (the consul) replied, "hardly, captain;" that they had, perhaps, left my men on board of the little Chilean man-of-war lying in the harbor, and said he would go and see the authorities about it without delay, and requested me to come to his office at 10 o'clock. At 10 o'clock, accordingly, I went to his office, and was there informed that he (Mr. Potter) would refer the matter at once to the American minister at Santiago, making it incumbent on me to wait return from the minister. Whilst at the office of the United States consul, Mr. Peña, secretary of marines, and the captain of the port, came into the consul's office, and told me whilst there that the captain of the port informed him that these men were not regularly shipped; but, after disproving that assertion by referring to the shipping articles of said ship, there and then before the United States consul, he said that I had agreed to their discharge, and had voluntarily sent them on board of the man-of-war. I flatly denied, as I now do, consenting in any manner or form to their discharge; moreover, the captain of the port never inquired of me whether the men were properly shipped until we met at that time in the consul's office. After what passed as above, Mr. Peña then left the office of the consul, in company with the captain of the port. I then learned from the American minister's letter to the United States consul that certain things had been grossly misrepresented to him (the American minister) by some of the authorities of Valparaiso, and was advised strenuously by Mr. Potter, the United States consul, to repair, without delay, to Santiago, and lay with the minister, in person, [the facts] on the subject; which advice I followed, and set out for Santiago on Tuesday morning at 7 o'clock, and arrived at Santiago on the following morning at half-past 10 o'clock. I then had an interview with the minister, and stated the case to him; after which I left Santiago, and arrived in Valparaiso at about half-past 1 o'clock p. m. of Friday.

I hereby set forth, for information of such as may require such information, the nature of the business of whaling, in which business I am now engaged:

1st. The crew and officers are paid their wages from what the ship obtains, receiving a certain portion of it as wages; it becoming evident, then, that, unless the ship gets oil, those who sail the ship get no pay; therefore, it is of all importance that a whaling vessel should be on the whaling ground as much as possible.

2d. It is an established fact that whales visit any ground but a few days at a time, and then are gone for an indefinite time—say from one or two, or even eight months—making it of inestimable importance that a ship should be on fishing grounds at such times as whales are there; that in ten days a ship of the size and accommodation of the Addison make [may] take whales enough to make a handsome year's work; that those engaged in this uncertain business depend upon these chances of taking oil, when it is on the ground, for pay, which

hope is the greatest inducement—I might say, the only inducement—to a crew to stay by a ship engaged in the whaling business; and losing a chance of taking a good fare of sperm oil may not, and probably will not, wear off the minds of the officers and crew during the remainder of the voyage; at least, it will not from my mind.

3d. The owners of the ship depend wholly on these chances for taking oil. As stated above, such a chance is, in substance, losing property, according to my views. I might take care of and get 300 barrels, and I might not see a whale; at any rate, I consider the medium an actual loss.

My officers and crew are exceedingly impatient at being detained here, and being kept on board ship, as I have allowed no one except my first and second officers to land at all, and those only on special business; strict watch is kept on board at all times, and no boat allowed to visit the ship unless on business. Yet after all these pains to prevent desertion and insubordination, on the 27th day of October, just past, a man, Daniel Bates, by stratagem, did desert and cannot be found, which makes it necessary for me to ship four men, at least, to make a complement for my ship; and five, to place me on the same footing I was on when I was ready, or nearly so, to take my anchor and get under way from this port of Valparaiso on the 15th day of October passed, 1850. On Sunday, 3d day of November, my boat-steerer deserted. And so I declare and protest against the authorities of Valparaiso and the government of Chile for all damages sustained by the ship for detention and otherwise; and so, therefore, present my claim for damages against the said government of Chile, accompanying this my protest, as will fully appear by reference to a document marked "Exhibit B."

THOMAS H. LAWRENCE, *Master.*

CONSULATE OF THE UNITED STATES OF AMERICA,
Valparaiso, November 20, 1850.

I, the undersigned, consul of the United States of America at this port, do hereby certify that the above is the true and genuine signature of Thomas H. Lawrence, master of the ship "Addison," and as such entitled to full faith and credit.

Given under my hand and the seal of this consulate the date above written.

Z. W. POTTER,
United States Consul.

We, the undersigned, a part of the crew of the whale-ship "Addison," of New Bedford, of which ship Thomas H. Lawrence is master, do hereby certify, that we have sailed in said ship for a length of time, as severally affixed to our names, and that during such length of time we have had always a sufficiency of food. We, therefore,

consider that those four seamen, named as follows: Anare Fuentes, Lorenzo Contealvo, Marcus John, and Adonicio Francisco, (being the same that were caused to be put on board the Chilean man-of-war called the "Chile," by the captain of the port of Valparaiso,) who made complaint to the said captain of the port of Valparaiso, to the effect that they did not get a sufficiency of food cooked since the said four seamen have been in said ship, although it has been imperfectly cooked, which fault we have every reason to believe would have been rectified had we made complaint aft to that effect, which we nor the said four seamen, to our knowledge, have never done.

As witness our hands, this sixth day of November, one thousand eight hundred and fifty. Sworn to before Z. W. Potter, United States consul.

GEORGE VAIRLY,

On board since May, 1850.

WILLIAM McKENNIE,

On board since 8th October, 1850.

JOHN NEEGEL,

On board since 8th October, 1850.

ZUBISSIO RILLOS,

On board since 8th October, 1850.

JOHN WILLIAMS,

On board since 8th October, 1850.

C. S. MEYER,

On board since 8th October, 1850.

Z. N. CARCEEN,

On board since 8th October, 1850.

CONSULATE OF THE UNITED STATES OF AMERICA,
Valparaiso, November 20, 1850.

I, the undersigned, consul of the United States of America, at this port, do hereby certify, that the above are the true and genuine signatures of the seamen of the ship "Addison," who signed the above document in my presence.

Given under my hand and the seal of this consulate, the date above mentioned.

Z. W. POTTER,
United States Consul.

Before me, the undersigned, consul of the United States of America in this city, this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and fifty, personally appeared George H. Cash, first officer of the ship Addison, of New Bedford, now lying at anchor in this port, who, being duly sworn upon the Holy Evangelists of Almighty God, did depose as follows:

That on Tuesday, the fifteenth of present month, at about 2 p. m., the captain of the port of Valparaiso came to the ship, in company

with Captain Thomas H. Lawrence, in his boat. That Captain Thomas H. Lawrence asked what was the trouble on board; that he, the said George H. Cash, replied, "nothing; that all were contented." The said Captain Thomas H. Lawrence then stated that a complaint had been sent to the captain of the port, stating the men were kept to work day and night, and had nothing to eat for three days. The said captain of the port then spoke to one of his boatmen; the man spoke a few words in Spanish, and immediately four of the seamen came aft. The said captain of the port then said to the said Captain Thomas H. Lawrence, these are the men who have complained.

That the said Thomas H. Lawrence then ordered some of the crew aft, and asked them, in the presence of the captain of the port, if what the four seamen had stated to the said captain of the port was true. That the seamen replied, "there was victuals enough for them, great plenty, only it was not well enough cooked—that was all." That the captain of the port then said, "these men do not like your ship." That the said captain of the port then spoke to the said seamen in Spanish; after which, he remarked to the said Captain Thomas H. Lawrence, "these men will not go in your ship." That the said Captain Thomas H. Lawrence asked the captain of the port if it was the law here, if a man said he would not go in the ship, he is not bound to go. He then ordered their things, and for them to be put into one of our boats and sent to the Chilean frigate, where they were taken by the second mate and three seamen, at about half-past three o'clock p. m.

GEORGE H. CASH,
First Officer of ship Addison.

CONSULATE OF THE UNITED STATES OF AMERICA,
Valparaiso, November 20, 1850.

I, the undersigned, consul of the United States of America at this port, do hereby certify that the above is the true and genuine signature of George H. Cash, first officer of ship Addison, and as such is entitled to full faith and credit.

Given under my hand, and the seal of this consulate, the date above written.

Z. W. POTTER,
U. S. Consul.

Before me, the undersigned, consul of the United States of America at this port, this twenty-second day of October, in the year of our Lord one thousand eight hundred and fifty, personally appeared Francis Fisher, second officer of the ship Addison, of New Bedford, now lying at anchor in this port, who, being duly sworn upon the Holy Evangelists of Almighty God, did depose as follows: That, on Tuesday, October 15th, the captain of the port of Valparaiso, in company with Captain Thomas H. Lawrence, came on board the ship

Addison, and that he, the said Francis Fisher, heard the said captain of the port order four seamen of the ship Addison to be sent on board the Chilean man-of-war, in one of Captain T. H. Lawrence's boats; that the said Captain Thomas H. Lawrence remonstrated against it, and asked the said captain of the port if it was the law of Chile, that if a man said he would not go in the ship, that he must have his discharge? That the said captain of the port replied, "Yes, if these men do not want to go in your ship, they are not bound to go." That the said Captain Thomas H. Lawrence then said to the said captain of the port, "If such is the law, and you demand the four seamen of me, I must obey your order." That the said Captain Thomas H. Lawrence then ordered him, the said Francis Fisher, to get one of the boats of the "Addison" ready, and that he, the said Francis Fisher, with three other seamen of the said ship Addison, [went] on board the Chilean man-of-war Chile, at about half-past three o'clock p. m.

his
FRANCIS + FISHER,
mark.

Second Officer of Ship Addison.

Attest:

WM. C. RUSSELL.

CONSULATE OF THE UNITED STATES OF AMERICA,
Valparaiso, November 20, 1850.

I, the undersigned consul of the United States of America at this port, do hereby certify that the above mark was made by Francis Fisher, (second officer,) of ship Addison, as his signature, in my presence.

Given under my hand and the seal of this consulate, the date above written.

Z. W. POTTER,
United States Consul.

VALPARAISO, *October 26, 1850.*

SIR: In answer to your request, to state what I had heard or seen of what took place when the captain of the port came to our store, on the 15th of this month, and adhering strictly to the truth, I can say the following:

On the said day, the captain of the port, Mr. Onello, came to our store about two o'clock in the afternoon, asking for the captain of the whale-ship Addison, who was in the store at the time, with Mr. Snelling and Mr. Loring; and after Captain Lawrence presented himself as the captain of the ship Addison, Mr. Onello told him that he had Chileno sailors on board of his ship, and that he was going on board of said ship, to take out four of the Chileno sailors.

To my question, whether it was necessary for the captain to accompany him, Mr. Onello said yes, it was necessary that the captain should go with him; after which, they both left the store.

This is all I have heard of the words that passed between Mr. Onello and Captain Lawrence.

I remain, respectfully, yours &c.,

FR. GABLER.

To CAPTAIN LAWRENCE,
Ship Addison.

CONSULATE OF THE UNITED STATES OF AMERICA,
Valparaiso, November 20, 1850.

I, the undersigned, consul of the United States of America at this port, do hereby certify that the above is the true and genuine signature of F. Gabler, of this city, merchant, and as such is entitled to full faith and credit.

Given under my hand and the seal of this consulate, the date above written.

Z. W. POTTER,
United States Consul.

This is to certify, that on the passage of the schooner Margaret Hopping from St. Catharine's to Valparaiso, which vessel arrived at this port on the 1st October, 1850, I saw several sperm whales on the coast of Chile, and passed a shoal of sperm whales the day previous to my arrival here.

WILLIAM H. DEAN,
Master American Schooner Margaret Hopping.

CONSULATE OF THE UNITED STATES OF AMERICA,
Valparaiso, November 20, 1850.

I, the undersigned, consul of the United States of America at this port, do hereby certify that the above is the true and genuine signature of William H. Dean, master of the schooner Margaret Hopping, of New York, and as such is entitled to full faith and credit.

Given under my hand and the seal of this consulate, the day above written.

Z. W. POTTER,
United States Consul.

VALPARAISO, October 18, 1850.

This may certify that I have been in the whaling business twenty years, and have at different times taken from 40 to 120 barrels of

sperm oil, four hours after leaving port ; and once, in 24 hours I took 336 barrels ; and according to the accounts of ship-masters recently arrived here, of the abundance of whales seen on the coast lately, and the fact that whales are on any ground but a few days at any time, and then are gone for months, it is of the utmost importance to those engaged in the business to be there at the time. At this season of the year, I consider the prospect on this coast good for 50 barrels per day.

WM. B. GARDNER,
Master of Ship Mary Mitchell.

CONSULATE OF THE UNITED STATES OF AMERICA,
Valparaiso, November 20, 1850.

I, the undersigned, consul of the United States of America at this port, do hereby certify that the above is the true and genuine signature of Wm. B. Gardner, master of the ship Mary Mitchell, and as such is entitled to full faith and credit.

Given under my hand and the seal of this consulate, the date above written.

Z. W. POTTER,
United States Consul.

VALPARAISO, *October 26, 1850.*

DEAR SIR: Being called upon by you to state the conversation passed between yourself and the captain of the port on the 15th of the present month, I have merely to say that, as you were preparing for sea on the 15th instant, the captain of the port called at our store, and questioned you whether you had four Chilenos on board of your ship, and, upon your answering in the affirmative, he wished you to accompany him on board. His object then was unknown to me, but upon your return you informed me that he had taken four Chilenos from your vessel, without any sufficient cause, and very much against your wish, as you were much afraid you would lose many men by desertion, in consequence of the extra detention of your vessel.

Hoping that strict justice may be awarded to all interested, I remain your obedient servant,

RUSSELL LORING.

To Captain LAWRENCE,
Ship Addison.

VALPARAISO, *November 5, 1850.*

This is to certify that I became acquainted with Captain Lawrence some three months since, during which time I have had some considerable business transactions with him, which have always resulted in

a manner highly satisfactory; and I have no hesitation in affirming that Captain Lawrence is as honest, honorable, and upright as any man that I have ever been acquainted with.

RUSSELL LORING.

CONSULATE OF THE UNITED STATES OF AMERICA,
Valparaiso, November 26, 1850.

I, the undersigned, consul of the United States of America at this port, do hereby certify that the above are the true and genuine signatures of Russell Loring, of this city, merchant, and as such are entitled to full faith and credit.

Given under my hand and the seal of this consulate, the date above written.

Z. W. POTTER,
United States Consul.

VALPARAISO, *October 26, 1850.*

DEAR SIR: Having been a passenger on board your vessel from Talcahuano to this port, I herewith submit my testimony in the case of your claim upon the Chilean government, and herewith certify that, on the 12th of the present month, when off twenty-five miles at the southward of the port, a school of whales were seen; chase was given, and you succeeded in taking one sperm whale, which yielded about seventy barrels. Having to land some oil, sold at Talcahuano, deliverable here, and the weather being rough, you deemed it advisable to enter the harbor, deliver your oil, and hasten out again, with all possible despatch, in pursuit. Since your detention, caused by the forcible removal of four of your men, I have conversed with the captains of several vessels who have arrived at this port, and they tell me they have seen large numbers of whales, and for some days at a time, this being the best part of the season. I consider, in my opinion, that you are fully entitled to damages estimated at the *best of good luck*; which opinion is confirmed by the report of almost every captain entering this port. In regard to the action of the government and that of Captain Lawrence, I certify that I went on board the American sloop-of-war Preble with you. In reply to your complaint, Captain Glynn and Colonel Potter both advised you to the course you are now pursuing.

Trusting you will succeed in obtaining every redress,

I am, dear sir, very truly, yours,

JOHN KEEN.

Captain T. H. LAWRENCE,
Ship Addison.

I have neglected to state the time which elapsed between the removal of the men and my proceeding on board, accompanied by you.

I would, therefore, state that not two hours elapsed when we were on board the "Preble."

JOHN KEEN.

As regards the using of the men on board the ship Addison, I never saw men used with more kindness by the captain and officers in my life.

In regard to Captain Lawrence's character, I know him to be a man of the best of principles. I have been acquainted with him for six months, and have always found him a perfect gentleman.

JOHN KEEN.

CONSULATE OF THE UNITED STATES OF AMERICA,
Valparaiso, November 26, 1850.

I, the undersigned, consul of the United States of America at this port, do hereby certify that the above are the true and genuine signatures of John Keen, a passenger on board the ship Addison, and as such are entitled to full faith and credit.

Given under my hand and the seal of this consulate, the date above written.

Z. W. POTTER,
United States Consul.

VALPARAISO, *October 26, 1850.*

DEAR SIR : Requested by you to certify what I know as to whether the captain of the port went on board your ship, at your own request, as a mediator between you and your men, I beg leave to say that, at the time the affair took place, I was engaged in the store despatching your business. Accounts were all made out, and settlement was about to take place; after which you remarked that you should go on board and get the ship under way. Our settlement would have taken fifteen minutes. The captain of the port came in the store, and asked you if you had not four Chilenos on board? You replied that you had double that number. He then said that you must go on board with him, to answer to a complaint made him by four of your men who were Chileans. You appeared surprised at this; whereupon one Mr. Gabler asked the captain of the port whether it would not be as well for him to go, as you were busy closing your accounts. The captain of the port replied, "No;" that you must go with him. You accordingly went; was gone on board, say one hour and a half and upwards, and upon your return told me that the captain of the port had obliged you to send four of your men on board the Chile frigate; and that, as the "Chile" was to sail early the next day, you would go at once to the consul and make your complaint, in order to get your men, to enable you to proceed to sea next day. I afterwards saw you in a conversation with the consul and the captain of the "Preble."

From the above, you may understand that it is my candid opinion

that the statement [that] was made by the captain of the port, that he went on board at your request, is entirely false.

Hoping the above statement may be of service to you,

I remain, your friend and obedient servant,

WM. W. SNELLING.

Captain LAWRENCE,

Ship Addison.

I have been acquainted with Captain Lawrence only since his arrival at this port—a period of about three weeks—and have found him to be in every respect a man steady in his habits, being a man, as far as I know, free from any vices; upright in his dealings; and, without flattery to him, I will say that he is a straightforward, plain-spoken business man.

WM. W. SNELLING.

VALPARAISO, *November 4, 1850.*

CONSULATE OF THE UNITED STATES OF AMERICA,
Valparaiso, November 26, 1850.

I, the undersigned, consul of the United States of America at this port, do hereby certify that the above are the true and genuine signatures of Wm. W. Snelling, of this city, and as such are entitled to full faith and credit.

Given under my hand and the seal of this consulate, the date above written.

Z. W. POTTER.

[No. 6.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Valparaiso, December 9, 1850.

SIR: I had the honor to receive, in due course of mail, your excellency's letter of the 6th instant. It gives me great pleasure to reply to the respective interrogatories proposed by your excellency.

1st. In reply, I answer that the authorities did offer to restore the said seamen therein mentioned to the captain of the "Addison" several days before the "Addison" left this port.

2d. That the ship "Addison" left the port of Valparaiso on the 6th day of November, 1850.

3d. That the man-of-war Chile arrived at this port on the 2d day of November last past, with the said seamen on board; and that she remained in this port four days before the "Addison" sailed.

In reply to the course suggested by your excellency in addressing Governor Blanco a note, making certain inquiries relative to the issuing of the order referred to, I beg leave to say to your excellency that the order was a "verbal one" to the captain of the port, and that his excellency Governor Blanco is at present absent from the port of Valparaiso. The order for the transfer of the men was given to the captain of the port before they were taken to the Chile.

As soon as his excellency Governor Blanco shall arrive, I will give your excellency the result of my inquiries.

I have the honor to remain your obedient servant,

Z. W. POTTER,
United States Consul.

His Excellency BALIE PEYTON,
*Envoy Extraordinary and Minister
Plenipotentiary, at Santiago, Chile.*

[No. 7.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Valparaiso, December 11, 1850.

SIR: I had the honor to receive your excellency's letter of the 10th instant, to which I beg leave to reply without delay.

In reply to the inquiry which you are pleased to make relative to the return of four seamen from the man-of-war "Chile" to the American whaler "Addison," I have to say that, some three or four days before the "Addison" sailed, and immediately after the return of the "Chile" to the port of Valparaiso, I received a note from the acting intendente (the commander of the Chilean frigate) proffering to return, at any moment, the said four seamen. I immediately called the attention of Captain Lawrence to the fact that I had received such a note. He declined to receive them, assigning as his reason for so doing that he had shipped (or had engaged to ship) other men in their stead; and so I informed the acting intendente in reply to his note. Captain Lawrence assigned no other reason for refusing to take back the said four seamen.

I have the honor to remain your obedient servant,

Z. W. POTTER,
United States Consul.

His Excellency BALIE PEYTON,
*Envoy Extraordinary and Minister
Plenipotentiary for the U. S. at Santiago.*

[No. 8.] *Government of Chile to ship "Addison" and owners.*

For expenses and damages incurred by unlawful impressment of seamen, as follows:

Ship expenses twenty-two days, at \$30 per day.....	\$660 00
Interest on property, \$60,000—twenty-two days, at \$20 per day.....	440 00

Insurance on same twenty-two days, at \$5 per day.....	\$110 00
Expenses of trip to Santiago.....	27 00
Private expenses twenty-two days, at \$5 per day.....	110 00
Debts of four seamen impressed	24 50
Advances paid to men shipped in their place.....	86 25
Damages done to voyage by general dissatisfaction of crew, and trouble caused thereby, and desertion of one seaman and one boat-steerer	1,000 00
Damages sustained by loss of twenty-two days for not being on whaling-ground during the best part of the whaling season	8,000 00
Consul's bills.....	69 00
Debts of two deserters, deserted here, as stated in the protest	22 50

I, Edward W. Morton, having examined the above bill, think the charges therein just and correct, having had command of a ship in the whaling business.

EDWARD W. MORTON.

Having examined the above bill, I do hereby certify that I consider it a very low bill for the above expenses.

S. MOCODNOK,
Master of the Ship Pacific, of New York.

Having examined the above charges, I think they are just, to the best of my judgment.

ROBERT L. CLARKE.

Having examined the above bill, I consider it a fair estimate of damages sustained in consequence of the detention of said vessel in this port.

WILLIAM H. DEAN,
Master of Schr. Margaret Hopping, of New York.

Having examined the above bill, I think the charges are very low, as I have had the experience of commander of a whale-ship for many years.

WM. B. GARDNER,
Master of Ship Mary Mitchell.

I, Wm. N. Winnett, having examined the above bill, think, from my experience on this coast, (having doubled Cape Horn seventeen times,) that the above bill is very moderate.

WM. N. WINNETT.

I, Alexander Bafter, having examined the above bill, as far as my experience goes, and from the opinion of many, think it very moderate.

ALEXANDER BAFTER,
Master of Ship Clever.

LEGATION OF THE UNITED STATES,
Santiago de Chile, May 8, 1851.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America near the government of Chile, had the honor, on the 8th of March last, to address a note to his excellency Señor Don Antonio Varas, minister of state and foreign relations of Chile, in relation to the impressment, by the local authorities of the port of Valparaiso, of four mariners—three Chilenos and one Frenchman—from the United States whale-ship “Addison,” on the fifteenth day of October last, while the said ship was in the port of Valparaiso; the said mariners having been taken from the deck of the said whaler against the wishes and remonstrances of the master thereof, and placed to serve on board of the Chilean armed vessel called the “Chile,” and by her taken to sea on the morning of the 16th of October last.

With the note above mentioned, the undersigned sent, for the information and satisfaction of his excellency, copies of all the depositions and other documents, which, as he believes, established the facts of the case beyond all dispute. To this note the undersigned has received no reply, save an acknowledgment of its reception by the communication of his excellency, bearing date the 14th of March; and he is confident that his excellency will see the importance of paying due and proper attention to a case involving questions of so much delicacy, and in relation to which, more than any others, the public feeling of the United States is sensitive and easily inflamed.

The undersigned felt it to be his duty to forward, and he did accordingly forward, by the last mail, to his government, a copy of this said note of the 8th of March, and regrets that he was unable to accompany his communication with the reply of his excellency.

The undersigned expresses the confident hope that his excellency will appreciate the importance of giving his early and serious attention to the subject, and that the conclusions to which he may arrive, after a full examination of the testimony submitted, will be such as to remove all just cause of complaint.

The undersigned avails himself of the occasion to renew to his excellency Señor Varas the assurance of his distinguished consideration.

BALIE PEYTON.

His Excellency SEÑOR DON ANTONIO VARAS,
Minister of State and Foreign Relations, Chile.

[Translation.]

SANTIAGO, *June 10, 1851.*

The undersigned, minister of state in the department of foreign relations, has the honor to reply to the note of the 8th of March of the present year, which was addressed to him by Mr. Balie Peyton, envoy extraordinary and minister plenipotentiary of the United States of America, relative to the transfer of four mariners from the American whale-ship "Addison" to the national frigate "Chile;" in which note his excellency considers the occurrence of the 15th of October last, on board of that vessel, as a usurpation of authority, and an invasion of the jurisdiction of the United States, committed by the maritime governor of Valparaiso, and by which the captain of the "Addison" has sustained damages, whose indemnification he thinks he has the right to demand from the authorities of Chile.

The undersigned has, so far, abstained from entering upon a new examination of this occurrence, waiting until all the facts which it might be possible to obtain should be furnished him, to the end that he might be enabled to present the occurrence, in this respect, in a manner which would effectively secure an appreciation of the facts in their true value, judging them according to the principles of justice and of the strictest impartiality. Impressed with these sentiments, the undersigned does not hesitate to confess to the minister plenipotentiary of the United States of America that he does not comprehend the motives which his excellency may have had in giving to that affair the grave character with which he appears to invest it in his honorable note, nor much less the principles upon which the demand of Captain Lawrence could be supported.

It must be observed, therefore, that from the investigations made by the gubernatorial and judicial authorities of Valparaiso, by order of this department, for the purpose of putting the occurrence, in all its details, in a clear light, there does not appear to be the slightest ground to suppose that it was the consequence of any preceding circumstance, which would justify the supposition that the maritime authority of Valparaiso was influenced by personal motives, or by any interested motives whatever. Between the maritime governor and Captain Lawrence there had been no former intercourse, as it appears; and absolutely there did not exist a necessity for sailors to man the "Chile," as might be supposed, because there was a great number of them in the arsenal and in the other national vessels, as is proved by the offer of them made to Captain Lawrence on the same day (15th) and on the day following. It is also to be observed that the captain of the "Addison" never presented to the authorities of Valparaiso the contract which he ought (*debido*) to have made with the sailors transferred to the "Chile," at the time of incorporating them with his crew at Talcahuano; a contract which ought to have been legalized by the maritime governor of that port, and which is indispensable, especially on board of a whaling-vessel, in order to establish the reciprocal rights of the captain and his crew. This supposed, and following the course of the maritime authority of Valparaiso in this occurrence, it is not difficult to believe that his conduct was as

blameless as the motives which inspired him were good: Four men belonging to the American whale-ship "Addison," (three of them citizens of Chile, and the other a Frenchman,) being discontented with the treatment they received on board of that ship, implored the intervention of the maritime governor. On this account the maritime governor seeks the captain of the "Addison," and goes with him on board. There he informs himself of the cause of the complaint of the four sailors, who, among other things, said that they were badly fed. This being made known to the captain, he answered that that difficulty would be remedied in future, because he thought of arranging the galley, and providing better food. (This is established by the exposition of Captain Lawrence himself.) The maritime governor made known to the discontented sailors what were the captain's intentions, and urged them to remain on board the "Addison;" but they replied that they did not wish to remain there on any account, because they were afraid that if they were treated so badly in port, they would be still worse treated at sea. This resolution of the sailors was again opposed by the maritime governor, who answered them that, if they insisted on leaving the "Addison," he would not permit them to go on shore, but that he would send them on board of one of the ships-of-war; to which they replied they would go anywhere rather than remain on board of the American vessel. It was then determined to transfer them to the "Chile;" the maritime governor offering to assist Captain Lawrence in up-filling his crew.

This was the conduct of the maritime governor of Valparaiso in the occurrence which took place on the 15th of last October, on board of the whaler "Addison"—conduct to which the captain of the vessel gave his consent; otherwise, his proceedings on that occasion would not have been at variance with what he now pretends to establish. If he had not spontaneously concurred in the visit of the maritime governor to the "Addison," with the object that this officer indicated to him, in seeking him in the house of Loring Brothers and Co., why was it that on meeting the American consul (with whom he must have spoken of the object of the maritime governor's visit to the "Addison,") he did not profit by that opportunity to protest before his consul against the intervention of the local authority in matters on board of his ship? Captain Lawrence could not mistake the object of the visit of the maritime governor to the "Addison." He might have known it in a manner more or less definite. He might have been ignorant of the result of this step; but he certainly knew that the object proposed was to settle a question between himself and his sailors; that is to say, he knew that the maritime governor was going in his official capacity to interfere on board of his vessel, which is what he has afterwards considered an offence; and if he saw that this offence was about to be committed on the flag of his nation, why was it that on meeting with the American consul and speaking with him on the subject, neither the one nor the other offered the least difficulty or observation to the maritime governor, in order, at least, to call his attention to the offence which he was about to commit on the American flag? From the moment that the visit of the maritime governor to the "Addison" was admitted, without the least objection, with an object

known to all, it appears that his intervention was accepted as competent in the matter, and that it was considered as entirely free from all offensive character towards the American flag. If it be supposed now that the sailors left the "Addison" without the consent of the captain, why did he lend a boat from his own vessel for their transportation? Why, above all, does he himself go with the maritime governor on board of the "Chile," visit that vessel, take a drink with her commander, speak of his accounts with the transferred sailors, and conclude by saying that "two of them might serve as seamen, and the other two only as landsmen, but that all four were lazy fellows?"

Can his excellency suppose that a man, in whose person an offence had just been made to the flag of his nation, as Captain Lawrence has since pretended, would do all this? One who has just suffered from an act, which prevents him from sailing within fifteen minutes in pursuit of whales, which promised him so rich a harvest? Nevertheless, all this is established by the evidence of Mr. Cabieses, commander, at the time, of the frigate "Chile," and which is not contradicted by that of Captain Lawrence, who limits himself to explaining the circumstance of having lent his boat for the transfer of the sailors, in a manner almost inadmissible in a person who fills the office of captain of a vessel.

The undersigned calls the attention of the minister plenipotentiary of the United States to these circumstances, with which he thinks he may yet be unacquainted, and upon the conclusive deductions which follow, and passes on to consider the conduct of the maritime governor on board of the "Addison," in the same manner that his excellency supposes it. Let it be supposed that that functionary exercised an act of jurisdiction on board of the American vessel, adjusting a question between the captain and the discontented sailors, and that this intervention of the local authority has not been spontaneously, though tacitly, concurred in by Captain Lawrence. What is there in the occurrence that could constitute a national offence? Is it not proper for every nation to exercise exclusive jurisdiction on board of merchant vessels anchored in its waters, except when it has been deprived of this right by treaties? Is not this practice constantly recognised by nations, and by the doctrine of writers generally respected on international law? "A clear distinction was to be drawn between the rights acceded to trading vessels and public armed ships. All exemption from territorial jurisdiction must be derived from the consent of the sovereign of the territory. When merchant vessels enter for the purpose of trade, it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such individuals did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country. Nor can the sovereign have any motive for wishing such exemption. His subjects, then, passing into foreign countries, are not employed by him; nor are they engaged in national pursuits. Consequently, there are powerful motives for not exempting persons of this description from the jurisdiction of the country in which they are found, and no motive for requiring it. The implied license, therefore,

under which they enter, can never be construed to grant such exemption." (Wheaton on the Law of Nations, page 148.)

And it is to be observed, that nations have seen the necessity of being governed by this principle, as it appears from the fact that they have constantly avoided investing their consuls with judicial powers, by not giving them, in so far as it concerns the settlement of questions between seafaring people of the nation which names them, any other character than that of simple mediators. "Their duties and privileges are now generally limited and defined in treaties of commerce, or by the statute regulations of the country which they represent. In some places, they have been invested with judicial powers over the disputes between their own merchants, in foreign ports; but in the commercial treaties made by Great Britain, there is rarely any stipulation for clothing them with judicial authority, except in treaties with the Barbary powers; and in England, it has been held that a consul is not strictly a judicial officer, and they have there no judicial power * * * But no government can invest its consuls with judicial powers over their own subjects in a foreign country, without the consent of the government of the foreign country, founded on treaty." (Kent's Commentaries, pages 41 and 42.)

The States of the American Union themselves, which once gave one of the rarest examples of exception to this rule, in its consular conventions with France, have returned to it, reducing the attributes of their consuls to the limits generally established by the practice of nations. Under this supposition, to whom did it belong to take cognisance of the complaint of the four sailors in question against the captain of the "Addison?" To no one, certainly, except the maritime authorities of Valparaiso.

It might be said that the more liberal spirit of some modern states tends to relax this principle, which excludes all foreign jurisdiction on board of even foreign vessels anchored in the waters of a nation. But this principle still holds all its force, and it cannot be pretended that a state must necessarily adhere to a contrary rule, unless she is obliged thereto by treaty, or by a long practice which may supply the place of a treaty.

This republic is in neither of these cases. It has not, in its treaties with other nations, stipulated on these matters anything which is not in conformity with general principles, and, in all cases which have occurred, bearing some resemblance to the present, in which the local jurisdiction was denied, ("*se declinaba*,") and it was attempted to establish the competency of a foreign jurisdiction, ("*i se pretendia probar la competencia de una jurisdiccion extranjera*,") this government has always sustained the territorial jurisdiction, being obliged thereto by positive requirements of Chilean laws, which are in accordance, on this point, with the principles of international law.

The undersigned persists, then, in believing, as he said in his note to his excellency of the 24th of October last, that even admitting the intervention of the maritime governor, on board of the "Addison," as an act of positive ("*perfecta*") jurisdiction exercised on an American vessel, there would be no reason to characterize that act as a violation

of the law of nations, nor as an offence to the flag of the United States.

In what has preceded, the undersigned has laid down the unquestionable rights of [the] Chilean nation, and the solid principles from which they are derived.

For the rest, he has no hesitation in declaring to his excellency, as he has already given him to understand in the conclusion of the note cited, that, if the conduct of the maritime authority of Valparaiso had been such as his excellency has believed—conduct perfectly legal, and susceptible of a victorious defence, according to the principles laid down—not on this account would it have been less at variance with the spirit that this government would wish to introduce, in its international policy, in relation to the intervention of the territorial authority in questions of internal discipline on board of foreign merchant vessels anchored in the waters of the republic.

Although his excellency, in his honorable note of the 8th of March last, makes but a slight allusion to the claim of indemnification that Captain Lawrence believes he has a right to make against the Chilean authorities, in consequence of the losses sustained by the extraction of the four sailors transferred to the Chile, the undersigned must make known what he thinks of the pretensions of the captain of the "Addison;" and it must be said that the more detailed information which he has of all that relates to this occurrence has modified but little, in his mind, the judgment which he has already expressed in his note of the 24th of October, in treating of the conduct of this individual.

Captain Lawrence establishes, in his statement, that on the same day, (the 15th,) and on board of his own vessel, the maritime governor offered to aid him in replacing the sailors who had left the "Addison," and that he refused to accept them. The same offer was made twenty-four hours afterwards by the intendente of Valparaiso, and he also rejected this offer.

What, then, does the captain of the "Addison" claim? The reparation of an offence committed against the American flag. But, there being in the port of Valparaiso a consul of the United States, by what principle, and in what character, did the captain of a whale-ship encharge himself, personally, with questions of this class, even so far as to make a trip to this capital, and to suspend, without motive, his maritime speculations?

Who detained him [at] Valparaiso after he had made known to the American consul the occurrence of the 15th of October, with every facility of filling up his crew immediately, and when, besides, respectable citizens of the United States, as this government knows, urged him to pursue the business which had brought him to the Pacific?

It does not appear that the conduct of the captain of the "Addison" was dictated by a sentiment of honor, but it does appear that it has been irregular, and would be a fatal example if he were to obtain what he claims.

If Captain Lawrence was governed by proper motives, the conduct which his position dictated to him was very clear, and ought to have

been well understood by him, according to the opinion of the undersigned. As a citizen of the United States, if in good faith he considered the intervention of the maritime authority of Valparaiso, in the occurrentive [occurrence] of the 15th offensive, he would have fulfilled his duty in making known to the consul of his nation, for the consequences to which it might give place, that which he considered as an injury done to the American flag; and, for the rest, he ought to have continued the course of his speculations, accepting the mariners which were offered him for the completion of his crew. He rejected these offers without any plausible reason, and wishing to make, it may be said, personal to himself that which he himself considered an offence to his nation. All this does not permit the attributing to Captain Lawrence other aims than of voluntarily occasioning delays and damages for which he expected to be indemnified by the authorities of the country. On the 3d of November, the frigate Chile having returned from the south, the captain of the "Addison" was then requested to accept the same four men who had left his vessel, and he refused as before.

For what reason? This time, this conduct is not explained alone by the certainty which Captain Lawrence felt that the repose to which he had seen fit to abandon himself would not result to his injury. There was, besides, another motive, not less powerful. The captain of the "Addison" did not leave Valparaiso, because he was trading with that market.

By the books of the custom-house at Valparaiso, it is seen that on the 5th of November policies were issued for the disembarcation of whale-oil from the "Addison." All this causes the undersigned to believe that, if the conduct of Captain Lawrence has not been dictated by a bad principle, it has, at least, been dictated by an erroneous one; and it cannot be pretended that this government should repair the consequences which he had brought on himself by his mistaken manner of doing things. Whether there was offence given or not, and whether or not the conduct of the first authority of Valparaiso was sufficient to repair it—in either of these cases, he could not be obstinate in following the conduct he has observed, without giving grounds for all who judge impartially to believe that he wished to profit by a conflict (which it is not proved was not prepared by himself,) in order to make from it a pretext for a claim.

Making a rapid synopsis of what has been shown, it may be established—

First. That Captain Lawrence agreed, or appeared to agree, to the intervention of the local authority of Valparaiso on board of the "Addison," in the question raised by the discontented sailors, and in the measure adopted of transferring them to the Chile.

Second. That even if there had been an act of jurisdiction exercised on board of the "Addison" by the maritime governor of Valparaiso, this cannot constitute a usurpation of authority, an offence to the American flag; because, according to the principles of international law, and the most constant practice of nations, each State has a right to exercise jurisdiction on board of foreign merchant-vessels anchored in its waters, except when they are obliged to abstain

from the exercise of that right by force of treaties—an obligation which Chile has not contracted with any foreign nation.

And lastly. That, without violating the facts and principles of justice and equity, the claim which Captain Lawrence pretends to establish against the Chilean authorities for damages, cannot be sustained. If he has really suffered damages, it has been because he wished to do so—damages for which he claims indemnification, with no other foundation than a pretext.

In concluding this note, the undersigned cannot do less than to signify to the minister plenipotentiary of the United States that this government sees, with regret, that there has been given, as it appears, on the part of his excellency, the character of serious grounds for reclamations to incidents in which the national authority is not blameable, and which, even supposing them somewhat offensive to the prerogatives of his excellency, or of his nation, should be considered amply satisfied the moment the superior authorities, solicitous to do away with all motive of difference with foreign states or their representatives, are the first to endeavor to repair them. To be disposed to consider occurrences of this nature as national offences, would be, in the judgment of the undersigned, to run the risk of turning aside from the path traced by that spirit of cordial impartiality and of conciliation which ought to animate those who fulfil the noble duty of preserving harmony and good understanding between nations.

The undersigned is, nevertheless, profoundly persuaded of the friendly disposition of Mr. Balie Peyton, minister plenipotentiary of the United States near this government, and he hopes that, after a new examination of the subject in question, his excellency will adopt the foregoing conclusions, as founded on justice and the true state of the facts.

The undersigned avails himself of this occasion to reiterate to Mr. Peyton assurances of his high and distinguished consideration.

ANTONIO VARAS.

The ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY
of the United States of America.

LEGATION OF THE UNITED STATES,
Santiago de Chile, June 15, 1851.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America near the government of Chile, has had the honor to receive the notes of the 13th of May and of the 10th instant, which his excellency Señor Don Antonio Varas, minister of state and foreign relations of Chile, was pleased to address to him in relation to the impressment, by the local authorities of Valparaiso, of certain mariners from the United States whale-ship "Addison," in the month of October last, while she was lying in that port.

The undersigned has read the said notes of his excellency with feelings of equal regret and disappointment, as affording evidence of a disposition on the part of the government of Chile to refuse to do that

which is required by the honor of the United States, and which is due to the protection which that government owes its citizens.

On the 19th of October last the undersigned did himself the honor to submit to his excellency the facts of this extraordinary case in an authentic form; and relying confidently on the friendly disposition of the government of Chile, and being actuated by a sincere desire to avoid all cause of complaint and irritation, he abstained from comment, not doubting that the authorities of Chile would properly appreciate his forbearance, under circumstances well calculated to justify a more decided course, and adopt without hesitation such measures as were manifestly due to the amicable relations subsisting between the two nations.

To his note of the 19th the undersigned received the reply of his excellency of the 24th of October, in which he felt himself justified in animadverting, in no measured terms, on the motives and conduct of the citizen of the United States, in the person of whom a palpable insult has been offered to the flag of his country, and in which he advanced principles of international law novel and inadmissible.

On the 8th of March the undersigned replied at length to the above-mentioned note of his excellency, accompanying his reply with a full transcript of all the testimony which he had caused to be taken, which fully established the facts of the case as represented by the United States consul in his communication of the 16th of October, a copy of which was submitted to his excellency with the note of the undersigned of the 19th of that month.

In his note of the 10th instant his excellency reiterates the views expressed by him in his note of the 24th October, which it was believed by the undersigned he had satisfactorily answered in his note of the 8th of March, and he is not disposed to reargue the case.

If any new facts have been elicited by the investigations which were instituted by order of his excellency at Valparaiso, the undersigned has not been put in possession of the same; and from the importance attached to the trivial and irrelevant circumstances which occurred on board of the "Chile," the most prominent of which seems to be that Captain Lawrence did not refuse a glass of wine when tendered to him, it is legitimate to infer that nothing material has been proven, and that it is impossible to overthrow the facts as established by the testimony which the undersigned submitted with his notes of the 19th of October and the 8th of March last, which are briefly as follows:

That when the United States whale-ship "Addison," having cleared, was about to sail out of the port of Valparaiso, on the 15th of October last, the maritime governor of that port, having first obtained from Governor Blanco an order for the purpose, insisted that Captain Lawrence, master of the said whaler, should accompany him on board, under the pretext of inquiring into the complaints of certain mariners, but in fact for the purpose of transferring four of the mariners belonging to the said whaler to the Chilean armed vessel called the "Chile;" that he concealed his real purpose from the captain of the whaler, and assuming to act in virtue of the laws of Chile, which he asserted alone prevailed on board the said vessel, to the exclusion of the laws of the United States, he ordered the mariners to be carried

in the boat of the whaler ; which was accordingly done, against the remonstrances of the captain of the whaler, and placed on board the "Chile."

It cannot escape observation, that, notwithstanding the scrutiny which has been instituted, his excellency does not seem to question the material facts established by the admissions of Governor Blanco, to the effect that, upon the application of the maritime governor, he issued the order for the transfer of the mariners from the whaler to the "Chile;" and, secondly, that he was misled by the statements of the maritime governor as to the assent of Captain Lawrence to the transfer of the seamen. These frank admissions of Governor Blanco to the United States consul were a part of the evidence submitted to his excellency by the undersigned, with his note of the 8th of March. Governor Blanco was not likely to make these admissions, and permit them to stand as evidence in the case, unless the facts were undeniable. Governor Blanco has been more than once in Santiago since the acknowledgment by his excellency of the note of the 8th of March. He is now present in the city, attending the Chilean Congress as a member of the Senate ; so that his silence is conclusive as to this portion of the evidence, and sweeps away the entire ground upon which is rested the defence of the maritime governor.

The undersigned regrets that his excellency continues to indulge in much severity of remark upon the motives of Captain Lawrence ; and to all that his excellency has seen fit to repeat on this point, the undersigned will only observe that it has been the good fortune of Captain Lawrence to merit the unqualified approbation of the United States consul, under whose advice he acted in this unpleasant affair, more especially in offering no forcible resistance to the maritime governor, and in submitting to his orders, and in placing his cause in the hands of the authorities of his country—a course which the undersigned cannot but consider in every way proper.

His excellency complains that Captain Lawrence did not produce to the authorities of Valparaiso the shipping articles or contract with the mariners. The undersigned begs to remind his excellency that, according to the laws of the United States, it was his duty to place his ship's papers in the hands of the United States consul, under a severe penalty, which he did immediately upon arriving in port. He would further remind his excellency that this question, as to the legality of the contract, or regularity of shipping the mariners at Talcahuano, was not raised by the mariners themselves, but was an afterthought, suggested by the maritime governor subsequently to the sailing of the "Chile," who, with Mr. Peña, the secretary of marines, called upon the United States consul, at his office, to examine the papers, which were found to be regular. Although it was a question over which, under the circumstances, the maritime governor had no control, yet the consul exhibited the papers, and placed that question beyond all doubt.

The undersigned cannot agree with his excellency that, on the arrival of an American vessel in a Chilean port, the master is bound to deposite his ship's papers with any other officer than the American consul, if there be one ; nor that, in the shipment of mariners on

board of American vessels, it is necessary to have the shipping articles authenticated by any other officer than the American consul.

With regard to the question of damages, the undersigned will not be drawn, at this time, into a discussion of mere pecuniary interests; not but that he is prepared to meet that question when it may be presented, when it will be easy to explain why Captain Lawrence did not accept those persons who, it appears, were offered by the local authorities to be transferred from the arsenals or armed vessels of Chile without consulting them; (men deprived of free agency are not likely to be such as Captain Lawrence would have selected;) and that when the same mariners were offered to him, on the return of the "Chile" in November, he had supplied himself with others in their stead; that the sale of the oil mentioned by his excellency was rendered necessary in consequence of the detention of the vessel in port.

But it is not the purpose of the undersigned to pursue the subject further, or to repeat the argument which he has heretofore made, considering that the facts and the law adduced in his note of the 8th of March are unanswered by the argument of his excellency.

It is now eight months since an insult was offered to the flag of the United States, in the waters of Chile, by an officer bearing her commission and acting in her name; an insult of a character most offensive to the government and people of the United States—it being nothing less than the impressment of seamen from one of their vessels—and, to this day, there has been no atonement, no apology, no offer of satisfaction; but, on the contrary, the injured citizen of the United States is denounced in no measured terms, and the note of his excellency is calculated to produce the painful impression that the government of Chile is disposed to justify and adopt the acts complained of.

The undersigned has been unwilling to impute to the government of Chile that which was done by the local authorities of Valparaiso, knowing how difficult it is for the best regulated states to control the actions of their citizens and subordinate officers, and confine them, on all occasions, within the strict limits of international law. But if the government of Chile has determined to approve and ratify those acts, then it is a national concern, and the government becomes the aggressor.

And the undersigned feels himself under the painful necessity of requesting to be informed by his excellency, explicitly, whether the government of Chile approves and adopts the acts complained of, or disavows the same; whether proper compensation will be made to those interested in the "Addison;" and whether the French citizen has been, or will be, discharged from the naval service of Chile, if forced to enter or is detained therein contrary to his wishes?

The undersigned avails himself of this opportunity to renew to his excellency Señor Varas assurances of his distinguished consideration.

BALIE PEYTON.

His Excellency SEÑOR DON ANTONIO VARAS,
Minister of State and Foreign Relations of Chile.

Mr. Webster to Mr. Peyton.

[Extract.]

DEPARTMENT OF STATE,
Washington, July 2, 1851.

SIR: * * * * *

As you have not transmitted to the department a copy of the papers referred to in your note to Mr. Varas, of the 7th of March, relative to the abduction of the three seamen from the whale-ship "Addison," by the marine governor at Valparaiso, no opinion can be formed of the case sufficiently definite to warrant instructions for your guidance in all its particulars. The general tone of your note, and the doctrines which it expresses, are approved.

The facts, so far as they appear, seem to show that the proceeding on the part of the Chilean authorities was arbitrary, and not justified by any apparent necessity. Chile was at peace with all the world. Those governments which assert a right to the services of their subjects, who may be seamen on board of the vessels of other nations, do not often exercise this right by taking them from such vessels in time of peace. The department, however, was not aware that Chile claimed the right even in time of war. The sudden use of the power, even in her own waters, at a period of profound peace, and without justifiable necessity, would be an act of variance with the comity of nations for which her government may justly be held responsible. It is presumed that the impressment was not authorized by any law of Chile, and that the sailors had not offended against any law of that republic. If, however, the circumstance that two of the seamen were Chileans might afford some palliation for the proceeding, the fact that one of them was a Frenchman heightens its arbitrary character. If we were quietly to submit to this, we could not remonstrate if the many English sailors on board our merchant vessels at Havana, or Rio de Janeiro, were to be removed from them to gratify the caprices of Spanish or Brazilian officers, or to make up any alleged deficiency in the crews of vessels under their command. Such acts would embarrass commercial enterprise, and engender a feeling at variance with that good understanding with foreign governments which we wish to preserve, so far as the most patient moderation and forbearance compatible with a just regard for our interests will allow. * *

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

DANIEL WEBSTER.

BALIE PEYTON, Esq., &c., &c., &c.

Mr. Peyton to Mr. Webster.

[Extract.]

[No. 21.]

LEGATION OF THE UNITED STATES,
Santiago de Chile, July 23, 1851.

SIR: * * * * * I have received from the minister of foreign relations no reply to my last note in relation to the case of the

United States whale-ship "Addison," and entertain very little hope of a satisfactory response from him, and shall anxiously await your instructions on the subject.

My own opinion is, that a most decided tone should be assumed towards this government, as nothing else will overcome or control the manifest prejudice existing here against our government and people.

* * * * *

Mr. Peyton to Mr. Webster.

[Extract]

LEGATION OF THE UNITED STATES,
Santiago de Chile, August 23, 1851.

SIR: * * * * I have received no reply from the minister of foreign relations to my last note of the 15th of June, in relation to the case of the "Addison," and herewith send the translation of an extract from the report of the minister to Congress on that subject.

* * * * *

Extract referred to in the preceding paragraph.

An incident which occurred on board the North American whale-ship "Addison" has originated a question, and given place to the exchange of various notes between this department and Mr. Peyton, envoy extraordinary and minister plenipotentiary of North America, of which I proceed to give account to Congress.

On the 15th of November, of the past year, the maritime governor of Valparaiso visited the "Addison," accompanied by the captain of that vessel, Mr. Lawrence, in consequence of four of his seamen, three Chilenos and a Frenchman, having implored the protection of the local authority. These men complained of the treatment they had received on board, declaring, among other things, that they were badly fed, and protesting that they did not wish to continue in the American ship, because they feared they would be treated even worse when on the high sea.

The maritime governor not being able to overcome their inclination, although he made known to them that the captain of the vessel offered to treat them better in future, determined to transfer them to the national frigate "Chile," offering to Captain Lawrence, at the same time, the means of filling up his crew, if he desired it. That measure being adopted, the captain provided a boat from his vessel for the transportation of the seamen, and he personally went with the maritime governor on board of the "Chile," where he spoke with Mr. Carbieses, the acting commander of the frigate at that time, of the few qualifications of the transported mariners, without manifesting, in the remotest degree, that he was dissatisfied with the conduct of the local authority in that circumstance.

This has been, according to the facts obtained up to the present time by the most diligent inquiries, the occurrence which the minister plenipotentiary of North America has considered as a usurpation of authority—an offence to the flag of North America ; and it has served as the foundation to claim indemnification for damages sustained by the ship, on account of her departure from Valparaiso having been delayed.

It was very far from being expected that this incident would serve as the basis of a claim. Many circumstances prove the voluntary acceptance, on the part of the captain of the American ship, of the intervention of the maritime governor, in consequence of the complaint of the sailors. The captain made not the slightest observation to the said functionary upon his incompetency to interfere in the complaint ; nor did the American consul, with whom the captain of the port had an interview at the moment of embarking, make, as would have been proper in the case, the slightest objection.

Besides, the intervention of the maritime governor, although the captain of the "Addison" might make a claim of it, cannot, under any aspect, be considered as an intervention offensive to the American flag. The authorities of Chile had a right to exercise jurisdiction on board of a merchant vessel anchored in the waters of the republic. Not only the laws of the state sanction this right, but also the principles of international law generally recognised, and in virtue of which it is competent to every state to exercise, exclusively, jurisdiction on board of foreign merchant vessels anchored in its waters.

In the case of the "Addison" there is, besides, the particular circumstance of three of the sailors in question being Chilenos, and that it does not appear, so far, that the captain had observed the requisite formalities in entering into the contract of shipment with these men when he incorporated them into his crew at Talcahuano—a contract which ought to be legalized by the maritime governor of the port, and which is essentially necessary in a whale-ship, in order to establish the rights and obligations of the captain and the crew, who generally participate, in proportions agreed upon, in the product of the fishery.

Passing by these considerations, the having offered to the captain, at the time of the taking away of the four mariners from the "Addison," the means of replacing them, is sufficient not to give to this act the character with which it is sought to invest it. This same effort was made anew, before twenty-four hours, by the intendente of Valparaiso, to the American consul, and this polite offer, accompanied by a frank manifestation of friendly sentiments towards that nation, made on the part of the first authority of the province, ought certainly to make known how far it was from being thought to commit an offence against the dignity of the American flag.

I have spoken above of the irregularity which there has been, as it appears, in the contract of shipment of the mariners who were taken from the "Addison," under the circumstances indicated. I will observe, in passing, that equal informalities, in relation to this same point, have given place to lamentable abuses, of which our native citizens, who ordinarily compose a large portion of the crews of the ships that navigate the Pacific, are the victims.

According to official communications from the consul of Chile in Callao, the captain of the American whale-ship "Adeline Gibbs" was obliged, a short time since, to disembark there six Chileno sailors, in consequence of the bad treatment he had given them. From the investigations made on this subject, it resulted that only three of the mariners had been shipped at Talcahuano, and this in a manner very informal; and that the others were embarked by surprise, and forced, in spite of themselves, to follow the vessel. Finally, the American whaler got under way from Callao, leaving the six seamen on shore, without paying them more than half of their wages, under the specious pretence that they had failed in their contracts.

In order to prevent as much as possible evils of this kind, the "comandancia jeneral" of the marine has ordered all the maritime governors of the republic, that when national sailors enter the service of a ship, it shall always be under the guaranty of a formal contract, a model of which he has furnished them. It is to be regretted that this salutary precaution has not been, thus far, punctually observed in all our ports.

Mr. Peyton to Mr. Webster.

[No. 24.]

VALPARAISO, CHILE,
September 24, 1851.

SIR: I have the honor to acknowledge the receipt of your despatch No. 17, bearing date 2d July, and am gratified to know that the general tone of my note to Mr. Varas of the 7th of March, relative to the abduction of three seamen from the United States whale-ship "Addison," and the doctrines which it expresses, are approved by you.

I transmitted to you a copy of all the papers relating to that case with my despatch No. 20, under date of 21st June, and also a copy of the reply of Mr. Varas, to which I rejoined on the 15th of June. Having received no acknowledgment of my note, on the 22d of August I addressed him the note a copy of which accompanies this despatch, marked A; to which he replied on the 23d, a translation of which reply is enclosed, marked B; also a copy of my note in reply, marked C; and a translation of his note inviting me to a verbal conference on the 28th, marked E. The conference was held on the 28th of August, at ten o'clock p. m., in the office of foreign affairs, as suggested by Mr. Varas, in the presence of Lieutenant MacRae, of the United States navy, J. B. Holman, secretary of United States legation, and Mr. Ermeneta, secretary of the hacienda.

The conversation was not reduced to writing by me, inasmuch as it was stipulated, beforehand, that Mr. Varas should reply in writing to my note of the 15th of June, a copy of which I forwarded to you with my despatch No. 20; but, up to this date, I have received nothing further from him on the subject.

The conference resulted in nothing satisfactory; on the contrary, Mr. Varas repeated the views which he had expressed in the note, a

copy of which you have, and urged them in a tone and manner which were anything but conciliatory; insisting that the jurisdiction of Chile over merchant vessels belonging to foreign nations, in her ports, was such as to justify what had been done by the local authorities, and that the maritime governor was the proper officer to act in the case; that he had full power to do what he did, but was hasty, and had committed some irregularity in the manner of doing the act, which the Chilean government regretted. This officer, denominated the maritime governor, is a subordinate officer of the custom-house; in the United States he is known as the harbor-master, and acted on this occasion as an executive officer, in obedience to an order issued, at his instance, by the intendente or governor of the province, who is *ex officio* commander of the navy.

On my recapitulating the facts as set forth in my notes, and as substantiated by the documents forwarded to you, Mr. Varas admitted that there was no conflict in the testimony, except as to the objection or remonstrance said to have been made to the removal of the seamen, on the part of the master of the whaler. On this point the testimony is full and direct, on the part of the captain of the "Addison" and his officers and men.

What testimony may have been received on the part of the government of Chile I am unable state, as Mr. Varas has not furnished me with a copy of the same; while I promptly laid before him copies of all the documents which I had received, in the confident belief that such a course on my part would have induced him to disclaim the acts of the local authorities, and make the proper atonement to the injured parties.

Towards the conclusion of the conference I inquired if he was prepared to state, at that time, whether the government of Chile adopted as its own, or disclaimed, the acts of the local authorities—whether that government would agree to pay whatever damages it might be made to appear those interested in the "Addison" had sustained by their detention, and discharge the Frenchman, if detained against his wishes in the naval service of Chile?

In reply, Mr. Varas stated, in substance, that the government of Chile would sustain the local authorities this far: that they had the power to do what they did; but inasmuch as there was some irregularity in the proceedings of the maritime governor, the government of Chile had to express its regret at the irregularity or informality of his conduct in sending off the seamen on the "Chile" at the time it was done; that the government of Chile was unwilling to acknowledge its liability in damages to any amount, and declined to pay anything; that as to the Frenchman, if he were detained on board the "Chile" contrary to his wishes, he should be discharged, unless he had voluntarily entered into a contract to serve in the navy of Chile.

I reminded Mr. Varas of his agreement to reply to my note of the 15th of June, in writing, which he assured me he would do; and the conference ended in a manner most unexpected and unsatisfactory to me. This is a mere outline of the substance of what occurred.

As soon as I am favored with Mr. Varas's reply, you shall be furnished with the same.

I remain, very respectfully, your obedient servant,

BALIE PEYTON.

Hon. DANIEL WEBSTER,

Secretary of State of the United States.

A.

LEGATION OF THE UNITED STATES,

Santiago de Chile, August 22, 1851.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America near the government of Chile, has the honor to inform his excellency Señor Don Antonio Varas, minister of state and foreign relations of Chile, that on the 15th of June last he had the honor to address to his excellency a communication in relation to the case of the United States whale-ship "Addison;" and from the length of time that has elapsed since the transmission of said communication, without any acknowledgment of its receipt, the undersigned fears that it may not have reached the hands of his excellency. The undersigned has, therefore, to request that his excellency will be pleased to inform him whether said communication has been received, in order that he may transmit to him a copy thereof, in case he has not received it. * * * * *

BALIE PEYTON.

His Excellency SEÑOR DON ANTONIO VARAS,

Minister of Foreign Relations, &c.

B.

SANTIAGO, *August 23, 1851.*

The undersigned, minister of state in the department of foreign relations, has the honor to acknowledge the receipt of the note of yesterday, in which the envoy extraordinary and minister plenipotentiary of the United States of America near this government, stating that he had been pleased to address the undersigned on the 15th of June in relation to the affairs of the American whale-ship "Addison," manifests a fear that it might not, perhaps, have reached the hands of the undersigned, on account of the silence which, so far, he had observed concerning its contents.

In reply, the undersigned has to say to Mr. Peyton, that after having maturely considered (literally "*after having impressed himself with,*" "*despues de haberse impuesto del contenido*" &c.) the contents of the note of the 15th of June, the undersigned determined to invite Mr. Peyton to a verbal conference, in order to facilitate, by this means, the termination of the said affair. But, in spite of himself, the un-

dersigned has not been able, thus far, to carry this idea into execution, grave occupations of business having prevented his doing so. * * * *

In the mean time, he hopes Mr. Peyton will have the goodness to excuse this inevitable delay in endeavoring to bring about, by this means, the settlement of the affair of the "Addison." * * * *

ANTONIO VARAS.

To the ENVOY EXTRAORDINARY, &c., &c., of the United States.

C.

LEGATION OF THE UNITED STATES,
Santiago de Chile, August 25, 1851.

SIR: * * * *

In replying to the suggestion of his excellency with regard to the proposed interview, the undersigned would beg leave to remark, that it will always afford him the utmost pleasure to meet and interchange views with his excellency on any subject; yet that, as he has presented the case, on his part, in writing, he considers it alike due to diplomatic usage, and to the important principles involved in this case, that his excellency should furnish a written reply to his note of the 15th of June, more especially as such a course will preclude the possibility of misunderstanding, so important to be avoided in a matter of such delicacy.

With this understanding, that his excellency will make a written communication in reply to the note of the undersigned of the 15th of June, notwithstanding anything that may be said at the proposed interview, the undersigned will, if desired, meet his excellency, with the greatest pleasure, at such time and place as may be most agreeable to him. * * * *

BALIE PEYTON.

His Excellency SEÑOR DON ANTONIO VARAS, &c., &c., &c.

E.

[Translation.]

DEPARTMENT OF FOREIGN RELATIONS,
August 27, 1851.

The minister of foreign relations has the honor to salute the envoy extraordinary and minister plenipotentiary of the United States near this government, and to invite him to enter upon (*celebrár*) the conference which he has announced to him, on to-morrow, the 28th, at 11 o'clock of the day, in the hall of this department, if not inconvenient to his excellency.

Mr. Peyton to Mr. Webster.

[Extract.]

LEGATION OF THE UNITED STATES,
Santiago, Chile, March 22, 1852.

SIR: In your despatch of the 22d of July; (No. 17,) you remark: "As you have not transmitted to the department a copy of the papers referred to in your note to Mr. Varas of the 7th (8th) of March, relative to the abduction of the three (four) seamen from the whale-ship 'Addison' by the marine governor at Valparaiso, no opinion can be formed of the case sufficiently definite to warrant instructions for your guidance in all its particulars."

"The general tone of your note and the doctrines which it expresses are approved," &c.

With my despatch No. 20 was forwarded a full and complete copy of all the evidence and correspondence in relation to the case; and having received no further instructions from you, and supposing the views expressed in your despatch No. 17 remained unchanged, on the 16th day of March instant I addressed a note to the minister of state, calling his attention to the subject, a copy of which note, with the translation of his acknowledgment of the same, is herewith enclosed, marked P and V. As soon as the same shall have been received, I will forward you a copy of his reply to my note of the 15th of June.

* * * * *

P.

LEGATION OF THE UNITED STATES,
Santiago de Chile, March 16, 1852.

On the 15th day of June last, the undersigned, envoy extraordinary and minister plenipotentiary of the United States of America near the government of Chile, had the honor of addressing a note to his excellency Señor Don Antonio Varas, minister of state and foreign relations of Chile, in relation to the impressment, by the executive authorities of Valparaiso, of certain mariners from the United States whale-ship "Addison."

In the conclusion of the said note, the last of several which he had the honor to address the minister on the same subject, the undersigned remarked as follows:

"It is now eight months since an insult was offered to the flag of the United States."

Having received no acknowledgment of the above mentioned note, the undersigned, on the 22d of August last, took occasion to call the attention of his excellency to the subject. On the 23d of the same month he received, in reply, a note from the minister of state and foreign relations, explaining the causes which had unavoidably de-

layed his answer, and suggesting a personal conference to which he contemplated inviting the undersigned. Upon which he remarked: *

* * * * "With the understanding that his excellency will make a written communication, in reply to the note of the undersigned of the 15th of June, notwithstanding anything that may be said at the proposed interview, the undersigned will, if desired, meet his excellency with the greatest pleasure, at such time and place as may be most agreeable to him," &c., &c. * * * *

As stated in a former note, the undersigned transmitted to his government a copy of the note he had the honor to address to his excellency under date of the 8th of March, 1851, and by the next mail which arrived from the United States, after the date of the above-mentioned conference, he received a communication on the subject from the Secretary of State of the United States, in which he approves of the general tone of the said note of the 8th of March, and the doctrines which it expresses.

The Secretary of State considers the facts show that the proceeding on the part of the Chilean authorities was arbitrary and not justified by any apparent necessity. Chile was at peace with all the world. Those governments which assert a right to the services of their subjects who may be seamen on board of the vessels of other nations, do not often exercise this right by taking them from such vessels in time of peace. He was not aware that Chile claimed the right of impressment, even in time of war. He considers that the sudden use of this power, even in her own waters, at a period of profound peace, and without justifiable necessity, would be at variance with the comity of nations, for which her government may justly be held responsible.

If, however, the circumstance that three of the seamen were Chilenos might afford some palliation for the proceeding, the fact that one of them was a Frenchman, in the estimation of the Secretary, heightens its arbitrary character. If the United States were quietly to submit to this, they could not remonstrate if the many English sailors on board their merchant vessels at Havana, or Rio de Janeiro, were to be removed from them, to gratify the caprices of the naval officers of other powers, or to make up any alleged deficiency in the crews of the vessels under their command. Such acts would, in the opinion of the Secretary, embarrass commercial enterprise, and engender a feeling in the United States at variance with that good understanding with foreign governments which they wish to preserve, so far as the most patient moderation and forbearance, compatible with a just regard for their own interests, will allow. * * * *

BALIE PEYTON.

His Excellency SEÑOR DON ANTONIO VARAS, &c., &c., &c.

V.

SANTIAGO, *March* 19, 1852.

The undersigned, minister of foreign relations, has had the honor to receive the note which the envoy extraordinary and minister pleni-

potentiary of the United States of America near this government was pleased to transmit to him, in which, making mention of the pending affair of the American whale-ship "Addison," he insists upon an answer to the note of his excellency of the 15th of June last, which may put an end to said affair.

His excellency very properly takes notice of the grave circumstances and difficulties which, having almost exclusively occupied the attention of the government for some months, have naturally delayed the affair of the "Addison," the antecedent circumstances connected with which the undersigned will very soon take into consideration, in order to be able to give the definite reply which Mr. Peyton desires, which he will be able to do within a few days.

In the meantime, the undersigned has the honor to reiterate to Mr. Peyton the assurances of his high regard and distinguished consideration.

ANTONIO VARAS.

To the ENVOY EXTRAORDINARY AND MINISTER

PLENIPOTENTIARY *of the United States of America.*

Mr. Peyton to Mr. Webster.

[Extracts.]

LEGATION OF THE UNITED STATES,
Santiago, Chile, April 26, 1852.

SIR: * * * * * * * * * *

The minister of foreign relations has not fulfilled his engagement to reply to my note of the 15th of June last, relative to the impressment of the four mariners from the United States whale-ship "Addison;" and from the tortuous policy of this government, and the state of unkind feeling existing here towards the United States, I am inclined to the opinion that, if he should reply, it will be in an evasive and unsatisfactory manner.

I have learned, from a source which I consider as semi-official, that one cause of the extraordinary course which the minister is pursuing in relation to this case arises from some alleged neglect, or omission, on the part of the authorities at Washington, to respond to or meet the views of the Chilean minister, Mr. Carvallo, which he views as disrespectful. I look upon this pretext as absurd, and shall act as though it had not been intimated to me.

It is palpable to the most casual observer that our government and people are not treated with the same consideration and respect on this coast as are the French and English. These governments have neither sympathy with our people, admiration for our institutions, nor dread of our power. And while I would be the last to advise an unjust or harsh course towards this or any other government, yet I do consider, in cases of flagrant aggression upon our flag, (such as that of the "Addison,") a prompt enforcement of reparation would be attended

with salutary effects, and tend, not only to the protection of our commerce and the maintenance of that degree of respect and influence which is due to the flag of the United States in these waters, but also to the good understanding and friendly intercourse which it is desirable to maintain with all nations, more especially on this continent.

It is now more than eighteen months since one of our whalers, the "Addison," was boarded in the port of Valparaiso, by an officer of this government, and four of her seamen were impressed into the naval service of Chile, and no atonement has been, or is likely to be made.

* * * * *

I am convinced that no claim, however just, presented by our citizens or government, would be allowed by this government. It is not for me to prescribe a remedy for this unsatisfactory state of things, growing out of a most absurd jealousy; but the sooner the proper remedy is applied, the better for all concerned, as any extraordinary patience and forbearance on the part of our government will be neither appreciated nor understood, but viewed in the light of a concession, or admission of right, and tend to invite further aggression, not only on the part of Chile, but of all the other states of South America, where our mariners and commerce are continually exposed to wrong and depredation.

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BALIE PEYTON.

Hon. DANIEL WEBSTER,

Secretary of State of the United States, Washington.

Mr. Peyton to Mr. Webster.

[Extract.]

LEGATION OF THE UNITED STATES,

Santiago de Chile, May 20, 1852.

SIR: I have the honor to acknowledge the receipt of your despatch No. 18, bearing date the 19th March last, with the enclosed circular and papers.

* * * * *

Availing myself of Mr. O'Brien's presence here, which I considered as furnishing a favorable opportunity, on Monday, the 17th, I addressed to the minister of foreign relations a note, earnestly calling his attention to the case of the "Addison," a copy of which is enclosed, marked O; and on the 18th received his reply, a translation of which is enclosed, marked P: together with the final answer of this government to my communications in relation to said cases; and I also send herewith a translation of the minister's note bearing date 29th April, but which was received with his communication of the 18th instant; as also a translation of certain testimony which accompanied the same, marked M.

The argument of the minister appears to be an elaborate repetition, in the main, of his former views, which you have; but I have not been able to give to it a very close examination, as it is still being translated

by the secretary of legation for the use of the department. I perceive nothing in the argument which has not been, or may not be, refuted without difficulty ; yet I am well convinced that no valuable purpose will be accomplished by any further discussion of the matter here ; and I readily acquiesce in his views, and consider the matter closed, as far as this government and the legation are concerned, until I receive your instructions on the subject.

You will at once perceive that the main stress and burden of his argument is directed to points and principles which are either irrelevant or uncontroverted by me.

As regards the facts, they seem to assume a new and different character as often as the case is re-argued by his excellency, for, I am sure, no two of his notes present them alike ; and in the personal interview between us, his facts and positions were inconsistent with his concluding note.

One of the main facts which he controverted in the interview was as to the order which it was said Governor Blanco issued for the transfer of the mariners from the whaler to the "Chile," saying that the fact did not appear to be established, &c., &c. This fact is now conceded. He then admitted that the maritime governor acted informally in sending the men to sea, when it was the purpose and intention of the intendente to have detained them for examination and trial. This is the idea he then seemed desirous of conveying ; but now he contends that the proceeding was regular and in accordance with the laws of the country, and argues as if there had been parties plaintiff and defendant, and as if the men had been legally tried, condemned, and sentenced, by a competent tribunal, to a term of service in the Chilean fleet, for the violation of the laws of the land.

If there had been any such judicial proceedings, it would be very easy to establish it by incontestable evidence. But this assumption cuts at right angles with another, and that appears to be his main position ; to wit, that the maritime governor acted the part of a mediator merely, with the approbation of both parties, the captain and sailors of the whaler, and that all he did was in accordance with their wishes. In the first note of the minister, he went so far as to assert that the captain of the port not only yielded his consent to act, at the solicitation of the captain of the whaler, but that he even obtained the sanction of the American consul, in advance, to what he did. See the testimony ; from which it appears that, so far from a trial of any kind having been in the contemplation of any of the actors in this scene, the first step taken was the issuance of the order by intendente Blanco, who was *ex officio* commander of the naval forces in the port, for the transfer of the men to the "Chile," then under sailing orders. This was a military order, by one acting in a military capacity, without which the commander of the "Chile" could not have taken the men on board of his vessel, or have received them into the service of Chile ; and when armed with this resistless military order, the maritime governor went in search of the captain of the whaler, and held his first interview with him on the subject, in the presence of several intelligent and disinterested persons, and then and there avowed his determination to do what he afterwards did ; to wit, to take the men away.

Although this was said in the presence of the American captain, he did not understand the language sufficiently to comprehend it. This does not wear the appearance of an arbitration, or of a legal proceeding, for the investigation of law and facts, before a competent tribunal. There did not elapse more than one hour, in all probability, between the issuance of the order and its execution.

It would appear that the intendente, Blanco, made several communications to his government on the subject, and one only of these communications has been copied by the minister as evidence in the case; from which it appears that he, the governor, contemplated no trial, nor did he consider himself as issuing a judicial process, but a military order, to be executed only upon the condition that the captain of the whaler gave his consent thereto. This I understand to be the meaning of the governor's evidence when referring to the order, which he admits he issued, for the transfer of the men. It is very certain, from the intendente's declarations to our consul and many other persons, that he issued the order and caused those men to be transferred to the vessel of war, in ignorance of the facts, he having been imposed on by the false statements of the maritime governor; that he became convinced of the imposition, frankly admitted it, and was ready to do all in his power to atone for the error into which he had been led; but the "Chile" having sailed at daylight, the men were beyond his reach. He offered others in their stead, but they were of such a character and description as no American captain would be willing to ship; and, besides, Captain Lawrence felt it to be his duty to lay the case before the American consul, who at once referred it to me.

It is impossible that I should have been misinformed as to the views and admissions of Governor Blanco, as they reached me not only through the American consul, but through others, his warm friends, who were apprehensive he might fall under the displeasure of his government, and lose his office, in consequence of this affair. I consider the silence of the intendente as an admission of the correctness of the statement of the American consul respecting his declarations soon after the occurrence. The idea of a judicial or other legal investigation bears the appearance of an after-thought, introduced to serve the purpose of an argument, just as does the position assumed in regard to the alleged illegality of the contracts of service with the mariners, or the omission on the part of the captain to execute a bond for their return, &c., according to law.

I am inclined to the opinion that the decree requiring such bonds was issued after, and in consequence of, the occurrence complained of. I will examine the law, and inform you in my next as to its provisions, date, &c.

But even admitting that the decree was in existence, and that its provisions were such as to have been sufficient to annul the contract as between the captain of the whaler and the seamen, and to have subjected the captain to punishment, it is very clear that the law was not invoked by the mariners to free them from an illegal contract, nor was it enforced by the authorities for the punishment of the captain, who, most certainly, was answerable to the laws of Chile for any in-

fraction of them. If the law was then in existence, the proceedings did not take place in and by virtue of it; but this idea was started after the "Chile" sailed out of the port with the men on board, when the maritime governor and others went to the office of the American consul to examine the papers to see if they could discover any defect in their form, but they were found to be regular, as the consul states.

With regard to the idea that the "Addison" was not detained, but voluntarily remained for the purpose of trading in the port, and the sale of a small quantity of oil, which is relied on as evidence of the fact, I have to remark, that this matter has been fully explained by the first officer of the "Addison," who gave his statement on her return to the port of Valparaiso, some months after the transaction, and which I now have in my possession; from which it appears that, owing to the increased expenses of the vessel in consequence of her detention, it became necessary to sell, and that the captain did sell, about one hundred and ten gallons of oil a short time anterior to her departure.

There is another portion of the evidence which is entitled to but little weight, as it seems to me, and that is the statement of the commander of the "Chile," which consists of the declarations of the maritime governor made to him in the presence of the captain of the whaler, because the conversation was in the Spanish language, which Captain Lawrence did not understand. This appears from his not comprehending the avowal made by the maritime governor, before William Gabler, that he intended to take the men from the "Addison," &c.

I shall not enter into any further discussion of this case with the minister, but leave the matter in your hands, so that you may issue such orders in relation to it as to your better judgment may seem proper.

* * * * *

BALIE PEYTON.

Hon. DANIEL WEBSTER,

Secretary of State of the United States, Washington.

LEGATION OF THE UNITED STATES,

Santiago de Chile, May 17, 1852.

The undersigned, minister plenipotentiary and envoy extraordinary of the United States of America near the government of Chile, relying on the repeated assurances of his excellency the minister of state and foreign relations, had hoped to be spared the disagreeable necessity of again soliciting his attention to the case of the American whale-ship "Addison." But his reasonable expectations, in this respect, having been disappointed by the continued silence of the minister, the undersigned has now the honor to inform him that John W. O'Brien, esq., has recently arrived in this city, bearing despatches from the government at Washington to this legation, with instructions to remain as long as it may be necessary in order to be the medium of communication between this legation and the government at home.

The undersigned is unwilling for the courier to return to Washington without bearing the promised reply of his excellency ; and for that purpose, and that alone, he has directed that Mr. O'Brien remain a reasonable time in Santiago. From the great disappointment which his excellency may well imagine would be felt at Washington in the event of the return of the bearer of despatches without his reply, the undersigned will not permit himself to doubt that the minister of foreign relations will perceive the importance of giving his early attention to this case.

The undersigned avails himself of this opportunity to renew to his excellency assurances of his distinguished consideration.

BALIE PEYTON.

M.

[Translation.]

SANTIAGO, *April 29, 1852.*

SIR : By order of the President, I have the honor to reply to the notes of your excellency of the 15th of June, 1851, and the 16th of March last, relative to the pretended *impressment*, or forced extraction, of four mariners from the whale-ship "Addison," by the authorities of Valparaiso. I regret the delay that has occurred in this reply ; but the grave and urgent engagements of the government, in matters of the highest importance, have made it inevitable.

Your excellency will permit me, before descending to the facts, to set forth the views of my government concerning certain questions of international law, which are touched upon in the two before-mentioned notes, and concerning which my government cannot accept the conclusions of your excellency. I propose to investigate these questions, availing myself, as far as it may be possible for me to do so, of American authorities. One of the questions to which I allude is relative to the right of jurisdiction of the local authorities over foreign merchant vessels. That this right exists as to foreign vessels in the ports and waters which pertain to the dominion of the local sovereignty appears to me a point incontrovertible, although there may be a variety of opinions as to the limitations and restrictions to which that right is subject. Wheaton, designating the limits of the judicial power of every independent state, says that it extends to offences committed against its own laws, by whatever persons, (by any persons—"por cualesquiera personas") within its own territory ; to the same offences committed by whatever persons, on board of its public and private vessels on the high seas, and on board of its public vessels in foreign ports ; and to the same offences committed by its subjects, wheresoever they may be committed. (*Elements of International Law*, page 169, third edition.) It appears to me to be clearly deducible from this doctrine, that the local authorities may exercise jurisdiction concerning offences committed on board of foreign vessels in its waters, when they violate thereby the laws of the local sovereignty.

The same author establishes, conclusively, that both public and private vessels, of whatever nation, on the high sea, or beyond the territorial limits of every other state, are subject to the jurisdiction of the state to which they belong, (page 157.) Public vessels or vessels of war, which enter a friendly port, generally open to those of their class, are not subject, according to the practice generally received, to the local jurisdiction, (page 150 ;) but merchant vessels are. I refer to the quotation from the 148th page of Wheaton, in my note of the 10th of June, 1851.

The laws of France establish a distinction. In the case of a foreign vessel in a French port, or even in cases of offences committed by a person who is one of the officers or crew of the vessel, against another person of the same officers or crew, and if by such acts the peace of the port is not disturbed, the French courts decline to take cognizance of them ; but in offences committed on board against persons who do not belong to the officers or crew, or by whatever person who does not belong to the same, or in offences committed by the officers, or even among themselves when they disturb the peace of the port, the French tribunals assume jurisdiction. This, notwithstanding, is peculiar to the jurisprudence of France, because, as observes the same illustrious American publicist, French legislation cuts off, in favor of such vessels, the local jurisdiction to an extent which the general principles of international law do not seem to require. Thus, as it is at the option of a nation to prescribe the conditions which it pleases to the admission of foreign vessels in its ports, so also is it free to extend, as far as it pleases, the immunities to which foreign vessels, which enter by virtue of its tacit permission, may have right by the general law and the practice of nations ; (pages 152 and 153.)

This is not opposed to the assumption of jurisdiction in an offence perpetrated in the territory of a nation, by the subject or citizen of another, by the tribunals of the nation of the delinquent, in cases particularly designated by the statute laws of the same nation ; as, according to the same respectable writer, happens in the United States and in Great Britain.

But if, as a general rule, criminal acts are from their nature local, and it is competent for the courts of the country in which the offence was committed to take cognizance of them, as the common law of England, generally adopted in the United States, recognises it—and even I believe that I could add the jurisprudence of all civilized nations—the particular statutes of certain nations cannot abolish a rule of justice, generally established, and, in my judgment, do no more than constitute, concerning the matter, two concurrent jurisdictions. If the criminal act be of that class which infringes the laws existing in the territory, I do not think that any one can dispute the competency of the local tribunals to punish the foreign delinquent, although the act may be also of that class whose judgment may be assigned by the said statute laws to the courts of the foreign nation.

Nothing can be more decisive on this point than the doctrine of Kent, copied in my note of the 24th of June. “This jurisdiction,” (of French consuls in the United States,) observes Kent, “was

merely voluntary, and destitute of all coercive authority; and, at present, we have no treaty which concedes to consuls even these limited functions." (Commentaries on American Law, vol. 1, pp. 42 and 43, edition of 1832.) It is seen, then, that in the opinion of this eminent juriconsult, all judicial power of consuls in a foreign country, and consequently all limitation of the judicial power inherent in the local authorities within its own territory, cannot have its origin save in a voluntary concession of the local sovereignty. France is perhaps the nation that has sought to give the greatest extension to the powers of its consuls in a foreign country. But, notwithstanding, her own juriconsults admit that, in the matter of consular jurisdiction, the practice of nations is very different. "In some countries, the mere act of exercising consular jurisdiction, even concerning national affairs, would be considered as a violation of the rights of local jurisdiction; and in such a case, the consuls of France ought to abstain from exercising it, it remaining at the discretion of the government to oppose reprisals of reciprocity against the State that refuses to the consul this jurisdiction." (Pardessus, *Droit Commercial*, vol. 6, p. 286, edition of 1842.) It is true that, in disputes relative to wages and agreements of enlistment between captains and crews, and even between captains and passengers, a kind of unanimous consent of nations authorizes the exercise of consular jurisdiction;" (page 289.) But this kind of unanimous consent does not exist; and Pardessus himself admits it, since, citing a French ordinance which appears not to admit in consuls more than a conciliatory intervention, concerning these matters, he is of opinion that it ought not to be applied save in those countries in which the local authority does not permit consuls to establish themselves in them, and reserves to itself the right of judging in virtue of its territorial competency; (page 290.) If I am not much deceived, the practice of Great Britain and of the United States is particularly alluded to in this passage. It will be permitted to me also to observe, in passing, that even admitting the consular jurisdiction in the sense of Pardessus, there might have been an exception to it; for, in the case in which the individual makes demands against the captain, he might have been of the same nation in whose territory the dispute arose. Passing, for the present, authorities legal and judicial, the Spanish law prescribes that consuls cannot exercise any jurisdiction, although it may be among subjects of their own sovereignty, except to settle amicably and extrajudicially their differences. (Law 6, title 2, book 6, Nov. Rec.) It will not be inopportune to remark, that the laws of Spain are in force in Chile, so far as they have not been abolished: that which I have just cited has not been; consequently, as regards those foreign vessels which participate in our commerce, and which by the act of visiting our ports submit themselves to the legislation of the country, there is a special reason for not conceding to consuls the exceptional jurisdiction referred to.

I have examined the consular instructions presented by the President of the United States to Congress on the 2d of March, 1833. I see in them nothing which indicates the existence of a judicial power in American consuls.

The matter of local jurisdiction over foreign merchant vessels was a point which was touched upon by the negotiators of the treaty of Washington of 1842, between the United States and Great Britain. But, nevertheless, this treaty does not contain any declaration or provision which, as respects the jurisdiction of the local authorities over foreign merchant vessels, recognises or establishes any rule which may alter the former state of things even between the contracting parties.

By some decisions of the American courts, it would appear that their jurisdiction over foreign merchant-vessels extends even to offences committed on the high seas. The superior court of New York laid down in 1817 this rule: "The State courts have jurisdiction in actions for wrongs and injuries committed on board of a foreign vessel on the high seas, both parties being foreigners; for personal injuries are of a transitory nature, and follow the person or the forum of the criminal. (Elliott's Diplomatic Code, page 304, edition of 1834.) A court of Massachusetts in 1823 decided that the court of admiralty has jurisdiction over offences and personal injuries committed against a passenger on the high seas; (page 306.) The same appears to be extended to civil matters. That a court of admiralty has cognisance in foreign maritime contracts, has been judicially decided several times, and particularly in Massachusetts, in the year 1815; (page 341.) Are not contracts between captains and mariners essentially maritime? But without insisting upon this latitude of jurisdiction, it is sufficient for me to refer to a celebrated decision of the Supreme Court of the United States, pronounced by Chief Justice Marshall, in the following terms: "The jurisdiction of the nation without its own territory is necessarily exclusive and absolute. It is susceptible of no limitation which it has not itself imposed. Any restriction on this subject, whose validity should be derived from an external source, would involve a corresponding diminution of its sovereignty, and the investiture of this sovereignty in the power that might impose such a restriction. All the exceptions, then, to the full and complete power of a nation within its own territory ought to be derived from the consent of the nation itself, as their first origin; they cannot emanate from any other legitimate source." (Cranch's Reports, vol. 7. page 136.)

I do not dissent, Mr. Minister, from the note of Mr. Webster to Lord Ashburton, of the 1st of August, 1843, cited by your excellency. The authority of the illustrious American minister is too respectable with me that I should not give to his views and opinions all the attention and consideration which they merit; but permit me to observe, in the first place, that the effort itself of Mr. Webster in restraining the jurisdiction of the local sovereignty over foreign vessels in its waters, and the principles and deductions which he employs to reduce it to certain limits, manifest that he favors a novelty in the practice generally established. I will observe, in the second place, that, although there may have been, concerning this matter, a full coincidence of ideas between the two plenipotentiaries; although Lord Ashburton might have accepted the exposition of Mr. Webster concerning this matter, in all its parts, this concert of opinion does not appear to have produced any practical difference, even between the United

States and Great Britain, since it was not made a rule, (*no se formulo*—was not formularized,) nor introduced, in any manner, in the treaty of 1842. I believe, in the third place, that even if that sanction were contained in the treaty of Washington, it would not have done more than establish particular rules of international law between the two contracting powers, leaving other states at full liberty to adopt those rules, or remain in the ancient practice, recognised by the most celebrated publicists and the decisions of the American courts themselves.

But, in the fourth place, examining with attention the note of Mr. Webster, I do not find in it an absolute denial of jurisdiction to the local authorities over foreign vessels which visit their ports. "Foreign vessels maintain and carry with them, *to a very considerable extent*, the jurisdiction and authority of the laws of their country, excluding, consequently, *to that extent*, the jurisdiction of the local laws." Merchant-vessels anchored in a foreign port are not, then, subject to the authority of their native laws exclusively; and so Mr. Webster himself recognises it, in a paragraph which unfortunately appears to have escaped the attention of your excellency, since it is found between the paragraph which commences: "*If a murder be committed*," and the paragraph, "*Your lordship will please to bear in mind*." It is true that the jurisdiction of a nation over a vessel which belongs to it, while it is in the port of another, is not necessarily exclusive in all its parts. We do not so consider or assert it; for whatever illegal act which is committed by the vessel while it is in the port, and for whatever contracts which the captain or owners may enter into while it is there, they and the vessel are undoubtedly responsible to the laws of the country. Nor, if the captain or crew, whilst they are on board in that port, disturb the peace of society by the perpetration of some crime, can they claim any exemption in their favor.

"It is to be presumed," says Mr. Webster, further forward, in one of the paragraphs transcribed by your excellency, "that it is permitted to merchant-vessels, which enter into open ports of other nations, to bring with them, and to retain for their protection and government, the jurisdiction and laws of their own country. All this, I repeat, *it is to be presumed*, is conceded to them: because the ports are open, because commerce is invited, and because this permission or concession is in accordance with the general custom. It is not to be denied *that all this may be refused*; and here occurs a distinction between what a state may do if it wishes, and what it is presumed to do, or not to do, in default of a positive declaration of its will." My government accepts of this distinction; and the prescriptions of our law 6, title 11, book 6, Nov. Rec., above cited, are referred to.

Finally, having read the answers of Lord Ashburton of the 6th of August, 1842, to the before-mentioned note of Mr. Webster, I am inclined to believe that your excellency may have seen some incorrect or incomplete copy, or some inexact compendium of the original; for I do not find in it the acquiescence which your excellency says Lord Ashburton gave to the theory put forth ("*desenvuelta*") by the American plenipotentiary. I consider as authentic the copy of said reply which is found in the History of International Law of Wheaton,

(page 731, edition of 1845.) Everything that I have been able to discover in it is opposed to that acquiescence.

The British plenipotentiary expresses himself thus: "Although you have emitted some propositions which do not fail to surprise and astonish me, not pretending to judge them, but that which is very clear is, that there are great principles involved in a discussion into which I cannot legitimately enter; and this consideration is for me an additional motive to desire that this affair may be referred where it may be weighed and examined perfectly. It is proper that the authorities of our two governments should guard themselves well from establishing, by their diplomatic correspondence, false precedents and principles, and not to give, with the object of avoiding a passing difficulty, examples which, in future, may mislead the world;" (page 734.)

For the rest, my government would be disposed to establish, in the matter of local jurisdiction over foreign vessels in its waters, an order of things which would not much differ from that recommended by Mr. Webster, whose luminous ideas in this part coincide, to a certain extent, with those of the government of Chile. But this could not be effected save by the medium of a treaty which would secure to us reciprocity. Such might be the object of the consular convention mentioned in the 30th article of the treaty of the 16th of March, 1822, between this republic and the United States of America. I seize the present opportunity to indicate to your excellency the propriety of entering into this convention as a means of avoiding delicate disputes and controversies concerning questions which cannot fail to occur frequently.

The last which I have the honor to offer to the attention of your excellency, and not of the least importance, concerning this matter of jurisdiction, is the practice of the United States with Chile. The Chile consul, in California, in an official communication of the 27th of November, 1850, informs the government that the authorities of San Francisco adjudge questions between captains and mariners of Chile vessels to the grave prejudice of masters and owners. Here, then, is a conduct observed by the authorities of the United States which is in manifest opposition to the principles which your excellency has labored to sustain. That alone would justify us in assuming jurisdiction over American vessels, even in matters which, according to the opinion of the most eminent publicists, it would be well to reserve to consuls of the respective nations.

In my opinion, it has been satisfactorily demonstrated that the Chile authorities, and, consequently, the captain of the port and maritime governor of Valparaiso, were authorized to exercise jurisdiction on board of the "Addison" whilst she might be anchored in the waters of Chile. Well, he who has the right of jurisdiction, even when, in the exercise of it over the persons and property of foreigners, he departs from the rules of justice, cannot be said to commit an insult against the nation of the stranger. A court of prizes may unjustly condemn neutral property, but would not commit thereby an insult against the nation of the neutral. A foreign vessel may be confiscated by the local laws under the pretext of an infraction of the revenue laws of the country; the proceeding of confiscation might be unjust

in itself, but ought not to be considered as an insult to the flag of the vessel. The injustice would give the right to the injured party to obtain the proper pecuniary indemnification—nothing more. The United States themselves have attempted reclamations in favor of their citizens, for acts carried into effect by Chile adjudications, which they characterized as unjust; but it never has occurred to them to aggravate them by characterizing them as insults to the nation or to the American flag. The enlightened understanding of your excellency cannot fail to discover the consequences to the good understanding of nations and the peace of the world which would result from a contrary rule.

It only remains to observe, that the visit of the maritime governor of Valparaiso on board the "Addison" was not a spontaneous act on his part; he was induced (*provocado*) to it by the mariners in question. He could not omit it without a culpable abandonment of his duty. If in it he transcended due limits in other respects, if he made a tortious use of his jurisdiction, that is another point which will presently be discussed.

It may be deduced from the same principles that the quality of *impressment* cannot be given to the act under discussion, in the sense which the American publicists give to that word, and which has been for so many years a matter of debate between the United States and Great Britain. An extraction of mariners from a foreign vessel is not an *impressment* when it is executed as a jurisdictional proceeding, although it might be unjust, although it might be forced. Concerning this matter it is sufficient for me to refer to the lengthy discussions which have taken place between the American and British governments. The former has denied to the latter the right which it arrogated to itself of drawing out of American vessels, not only in British ports, but on the high seas, the mariners who were, or were supposed to be, native subjects of Great Britain, without other reason than that of the right which their native country had to their services as such subjects. Thus it is, that in the objections of the American ministers to such a right, they have insisted, now, on the instability of the principle and the liberty of the individuals to throw off ("*abdicar*") the character of subjects of a particular state; now, that no law of any country prohibited mariners from enlisting in a time of peace on board of a foreign vessel; now, in the difficulty of distinguishing the nationality between Englishmen and North Americans; now, on the vexations and grievances with which such a practice could not fail to be accompanied in respect to those mariners to whose services Great Britain could not allege any title; in fine, reasons have been insisted upon which do not appertain to the point of local jurisdiction of which we are treating, and which, as I have before said, Mr. Webster himself, in the same note cited by your excellency, distinctly recognises.

I might well allege that a real *impressment* has not been looked upon by the American government as an insult to its flag, but a grave and pernicious injustice. The American government is not a government of those who would have swallowed an insult from any nation without obtaining proper satisfaction; nor is it a government of those who, for the purpose of characterizing an insult, do not attend to the

nature of the act, but to the strength of the state to which the offence is imputed.

It would be lawful for me to urge also two important concessions made by Mr. Pickering, Secretary of State of the United States, in the instructions which he gave to Mr. King, the American minister in London, on the 8th of June, 1796. "If afterwards," (the arrival of an American vessel at a port of the British colonies,) "any augmentation should be made to it (the crew) with British subjects, these may be taken out. In the ports of Great Britain and Ireland, the *impressment* of British subjects which may be found on board of our vessels must, doubtless, be admitted—[must doubtless be admitted.]"

Your excellency cannot do less, as I conceive, than to acknowledge that these two rules are perfectly applicable to almost all the mariners concerned in this case, whose Chile character has not been denied, and who, besides, enlisted in Talcahuano. So that even considering the extraction as an *impressment*, (which I am very far from admitting,) the reclamation of your excellency could not justly be made, except as it relates to that one only of the mariners extracted who was not a Chileno, ("*el reclamo de V.S. no pudiera recaer justamente sino sobre aquel solo de los marineros extraídos qui no era Chileno.*")

I should say that in the extract which your excellency has furnished me from a note of Mr. Webster, in that of your excellency of the 16th of March last, I think concessions are found which are sufficiently removed from the severity of your excellency. Mr. Webster recognises a difference between the impressment of mariners of the nation which exercises it, and that of mariners of other nations. Mr. Webster does not appear to disavow the legitimacy of the impressment in the territory of the nation which exercises it, in the case of mariners who, by their birth, belong to it.

But it is not necessary for me to avail myself of these allegations, however well founded they may be. The reasoning of Mr. Webster, according as your excellency has expounded it, is only applicable to the *impressment* which is exercised in the case of national mariners from the fact of being such; and the circumstances of the present case show that the visit of the maritime governor of Valparaiso on board of the "Addison" did not have for its object the exercise of such a right. The government of Chile has never pretended to exercise it.

My persistence in the right of jurisdiction might appear contradictory to what I had the honor to say to your excellency in one of my preceding notes, when I stated that the maritime governor of Valparaiso did not go on board the "Addison" to exercise jurisdiction, but simply as a mediator. Our laws permit Chile magistrates to exercise this function of mediation when the parties desire it, especially in the matter of personal grievances. The maritime governor of Valparaiso went on board of the "Addison" with this object, and that which passed there appears to have left in his mind the impression of its not having transcended the limits of a mediation offered and joyously accepted. But it is indifferent what opinion may be formed concerning this. If there was no voluntary acceptance on the part of the captain of the "Addison," the extraction of the mariners was

a jurisdictional act ; whether conformable to the rules of justice or not, may be examined at its proper time.

It results from what has been said, that if the conduct of the maritime governor of Valparaiso was an act of *impressment*, it was, notwithstanding, legitimate relative to all the mariners extracted, with the exception of one only, according to the opinion of one, and perhaps two American Secretaries of State ; because those mariners were Chilenos, and had been a short time before enlisted ("*enganchodos*") in a Chile port. And if the conduct of the maritime governor is looked upon as a jurisdictional act, as it ought to be, it is incontestable that the jurisdiction which he exercised belonged to him ("*le competia*") concerning all the mariners of the "Addison," according to all the authorities above cited, and according to the practice of American functionaries themselves with Chile vessels. Nor will it be too much to say that even the writers themselves who wish to except from the local jurisdiction the disputes between captains and mariners are not far from making ("*no distan de hacer*") an exception to this rule in the case of one of the disputants belonging to the country which exercises the jurisdiction. But there are other grave circumstances. The enlistment ("*el enganchio*") of the Chile mariners in Talcahuano has all the appearances of illegality. It is required ("*está prevenido*") for the shipment of a Chile mariner on board of a foreign vessel in our ports, that a formal contract between the captain and mariner, made out ("*formulada*") in the terms of the printed model which I have the honor to transmit to you, shall be necessary. The document containing this contract was asked of the captain of the "Addison," even through the intervention of his consul, and it could not be obtained. When this gentleman gave the assurance that having examined ("*refiviendose*") the papers of the vessel, he found that the mariners had been legally shipped, it is probable he did not have before him the obligation of the formal contract which I have pointed out, and that he conceives that the signature of any one of the public officers at Talcahuano would be sufficient. This is, at least, what results from the investigations made by order of the government concerning the matter. By all means, the exhibition of the contract was an essential requisite for every reclamation concerning Chile mariners enlisted in Chile.

Your excellency appears to deny the right of the local authority to take cognizance, in contracts of enlistment of mariners, in Chile ports, with the object of making them serve on board of foreign vessels ; and I, for my part, disavow the principle in which is founded the denial of a right which undoubtedly enters into the sphere of the attributes of sovereign power, to which no one disputes the competency to subject foreign commerce, within its own territory, to the restrictions which may appear convenient to it. The power of enlisting mariners is one which may be easily abused, in prejudice of the interests of the country. Could the right of prohibiting, absolutely, the enlistment of Chile mariners in Chile territory be denied us ? And for the purpose of making this provision effective, would it not be necessary, at least, that the local authorities should inspect the roll and assure themselves that new enlistments had not been made, in violation of the

law? Chile has not proceeded so far; she permits in her territory the enlistment of Chile mariners under the condition of the contract whose model accompanies this. The captain who receives Chile mariners in Chile, without complying with this condition, infringes Chile laws, and exposes himself to all the consequences of the illegality of the act. The right of promulgating laws supposes the right of having them executed within the territory to which their authority extends, and that of taking all necessary measures to prevent their being infringed or eluded.

By the light of the principles which I have had the honor to expound to your excellency, it is not difficult to form an estimate ("*calificar*") of the facts.

The maritime governor of Valparaiso, in consequence of a complaint of certain mariners of the "Addison," went on board of that vessel, and could exercise jurisdiction in it; consequently, and as a corollary of this same power, could assume the office of mediator between the parties. Concerning that which occurred on board of the "Addison," there is a contradiction between that which was stated to the intendente of Valparaiso by the maritime governor, on the one hand, and that which was stated to the United States consul at that port, by the captain of the "Addison," on the other.

Judging from the circumstances that took place subsequently to the visit of the maritime governor, it would appear that everything that may have passed between them was of a tranquil and friendly character. But I have no necessity of insisting on this. The jurisdiction may have been executed in an agreeable manner; the governor may have ordered the taking away of the mariners in an authoritative manner, in consequence of what the parties had laid before him. All that can be said is, not that the governor arrogated to himself a jurisdiction that did not belong to him, but that he made an evil use of it; that he took upon himself an unjust proceeding. This, it appears to me, is the only ground upon which the question can be placed.

That the extraction of the mariners was not an *impressment*; that though it were an *impressment*, it would not have constituted an insult to the flag of the United States, are deductions which appear to me sufficiently proved in the first part of this note.

Not only ought the question to be reduced, as I have before said, to the point of the justice or injustice of the proceeding of the maritime governor, but the reclamation ought to be confined solely to the mariner, of those extracted, who was not a Chileno. As for the others, not having presented the contract of enlistment required by the law of Chile, there is every reason to believe that they were illegally embarked.

There remain two points to which I hope your excellency will direct your attention with those sentiments of equity which characterize you:

1. Was the proceeding of removing the French mariner unjust?
2. Supposing it to have been unjust, was not a most liberal reparation spontaneously offered to the captain by the authorities of Valparaiso, proposing to replace all the mariners taken away?

The undersigned will discuss the questions which I have just stated

above, answering categorically the inquiries which your excellency was pleased to make of me in your note of the 15th of June of the preceding year, notwithstanding that (with the exception of the last) it was easy to collect the answer of my government from what had been set forth, (“*de lo expuesto.*”)

Does the government of Chile approve and adopt the acts which have given place to this complaint, or disavow them? If the complaint is founded in the character of *impressment* which is attributed to those acts, or in the incompetency of the jurisdiction assumed by the maritime authorities of Valparaiso, it is founded (based upon) a false supposition, and my government does not find itself called upon to adopt nor to repudiate that which has never existed. If the exercise of that jurisdiction is merely characterized as being unjust, and if that injustice should exist, my government would not only disavow and disapprove of those acts, but would reprimand the functionary who should have thus proceeded. But that injustice, so far, has not been shown to my government. The acts which occurred on board, which are those that principally characterize (give character to) the proceeding of the maritime governor, reported in a very different manner by those who took part in them, do not warrant the characterizing of that proceeding as unjust. According to the relation of the captain of the “Addison,” the maritime governor effectually heard the demands on board; and, as the captain himself thinks, he agreed that the complaints were not entirely unfounded in respect to the food. This fact, in which both parties agree, appears to be corroborated by other declarations; and although the character and habits of the captain inspire your excellency with confidence, you cannot do less than to conceive doubts concerning the exactitude of his relation. For the undersigned, there are very powerful reasons for doubting, and sufficient for giving the preference to the relation of the maritime governor. The relation of the captain concerning the facts which occurred on board is confirmed—(corroborated, assisted, favored, “*apoyada,*”)—by only two officers of the same vessel, and dependants of the captain.

The exposition of the maritime governor is corroborated, in parts strongly calculated to render certain the consent and acquiescence of Captain Lawrence, (“*esta apoyada en partes mui sustanciales para dar por cierto el consentimiento ó acquiescencia del Capitan Lawrence,*”) by the commander of the “Chile,” chief, as the maritime governor, and not subaltern, and by the declarations of the mariners of the boat of the custom-house officers.

Those incidents which occurred on board, which your excellency calls trivial, and which you suppose is all that results from the investigations made by order of my government, are of much importance in estimating contradictory expositions, because they reveal a conduct which agrees very badly with the resistance and negation of the captain, with his want of consent to the transfer of the mariners to the “Chile.” Without the fatal coincidence of the immediate sailing of this vessel, the occurrence which occupies me, I am certain he never would have loaned himself to serve as the foundation of a diplomatic reclamation; and without the desire of Captain Lawrence to advance

this claim, he never would have availed himself of the idea that the mariners extracted were transferred for the service of the "Chile," for the purpose of completing her crew. Among the papers ("*piezas*," pieces) which I transmit to your excellency in copy, your excellency will find some of the antecedent ones ("*de los antecedentes*") which the undersigned has had before him, and from which, in passing, it was shown that the "Chile" was in no want of mariners, the facilities which the maritime authorities of Valparaiso had of supplying that want had there been such, with mariners from our vessels of war, from the arsenal, and even with those four individuals who, in the evening of the sixteenth of October, were offered to the captain of the "Addison" in replacement.

In order that expositions such as that of Captain Lawrence may serve as a basis to a government for its acts, or from which to form its opinion, in preference to the communications transmitted by functionaries of its dependence, ("*de su dependencia*"—in its employment,) corroborated by chiefs such as the Commander Cabrieses, circumstances are required which the undersigned does not divine in the present case. So far from this, he finds that the maritime governor had no interest in the transportation of the mariners, and still less in feigning or supposing a reclamation which had no existence, and in respect of a vessel which had been in port only three days; and if it be borne in mind that the captain of the "Addison" might have had an interest for the purpose of availing himself of that pretext, and to delay his sailing, which is corroborated by his not having wished to accept the four mariners, who on the same day of the reclamation were offered to him; and if it is borne in mind, also, that there may have entered into his views the thought of an ulterior reclamation for indemnification; if this supposition is not correct, I do not know what can be pretended in any country where the captain of a vessel which arrives at a port without any former connexion with it, being unknown, should be believed in preference to the official communications of the functionaries of the same country, which rejects their information without sufficient motive, annuls the jurisdiction which belongs to them, and ties their hands that they may fulfil their duties, without more foundation than the accusation that their statements are inexact and their proceedings illegal, made by a captain interested in what thus may be for the purpose of strengthening a demand for damages.

There are no motives, then, that warrant the attributing to the maritime governor, against the tenor of his expositions, the conduct which is attributed to him, or even to make it probable. The same does not happen with the captain of the "Addison." The conduct which is attributed to him, preserves a consistency with his interests; his testimony is that of the party interested, and in the most important circumstances is only sustained by the declarations of the two individuals who are dependents of his. Before no authority, before no tribunal, would a fact be considered as proved by the testimony of individuals to whom an advantage results from the establishment of that fact, the same fact being falsified by the expositions of persons in whom no personal interest is discovered.

Notwithstanding no grounds are found for considering the proceeding of the maritime governor as unjust, it has not been approved by my government; not because he may have exercised jurisdiction which did not belong to him, nor that he exercised it tortiously, but because, to a certain extent, he departed from the limits to which my government considers it proper and conformable to the general interests of commerce to subject itself in the use of its jurisdiction, adopting the customs most favorable to the advancement of its commercial interests, and more in harmony with the benevolent dispositions which animate it in respect to the different flags which visit the ports of the republic.

Will the proper compensation be given to those interested in the "Addison?" My government never has failed to satisfy the obligations which its acts imposed upon it; and if there had been, in the proceeding of the maritime governor, the injustice which your excellency supposes, and if, in consequence of that injustice, there had been the damages which are demanded, this question would have long since been settled. The justice of the reclamation being recognised, the time necessary to determine and value the damages would alone have transpired in satisfying it. Fidelity in the discharge of its duties, and the acceptance of the responsibilities which its acts impose on it, have been rules which the republic has followed in times past, and to which it has not failed to bind itself in questions in which great interests were involved; so that, not in the least should it be doubted that in the present case, in which are involved quantities of no importance, it would falter in rules which prescribe to it not only its loyalty and honor, but its proper dignity.

But if it is firm in its resolution to accept the responsibilities which its acts justly impose on it, or the acts of its subordinates, not the less so is that which it has formed to resist all those which are unjustly or improperly sought to be imposed on it.

What would be the principle of justice by which the reclamation of the captain of the "Addison" could be sustained?

Your excellency very well knows that immediately after the sailing of the "Chile," the replacement of the mariners was offered to him, which was not accepted, and that eighteen days afterwards, about the 1st of November, the same mariners that were extracted on the 15th of October were placed at the disposition of the captain of the "Addison." Supposing the proceeding of the maritime governor to be unjust, could a more effective reparation have been adopted than the replacement of the mariners and the restitution of those extracted fifteen days afterwards—that is, as soon as possible?

If the captain of the "Addison" did not desire to accept, neither in the first nor second case, the replacement, without doubt it was because it did not give him great importance,—because the delay in seeking others was a matter of indifference to him; and if, from not having accepted the replacement, he has incurred damages, the fault is his.

I have proceeded in the supposition that the proceeding of the maritime governor was unjust, but I have shown above to your excellency that there is no foundation for so considering it. The maritime

governor in the exercise of a legitimate jurisdiction ordered the transfer of the mariners, who complained against the captain, and according to circumstances of weight, with his consent. Who can complain of injustice? And admitting that the captain might have opposed it, neither would there be injustice in the transfer and deposit of the mariners in a national vessel of war, made in a provisional manner, and whilst an account of it was made to the commander-general of the marine, who, as the highest authority, and in the best situation to estimate the occurrence which lead [led] to the measure, could determine with more certainty. I do not know any principle of international law, nor practice of civilized nations, which constituted such a proceeding an injury—an injustice.

In virtue of what has been set forth, I declare to your excellency definitely that my government does not consider itself bound to become responsible for damages which it is supposed have been the consequence of the proceeding of the maritime governor of Valparaíso, with respect to the four mariners of the "Addison."

Will the French mariner be discharged if he was forced to enter the Chilean service, and remains in it against its [his] will? I will premise that the embarkation of this mariner on the frigate "Chile" was an act posterior to the visit and extraction which has given rise to this complaint; that the French mariner extracted by a jurisdictional act ceased to belong to the North American marine; there certainly remaining to those interested in the "Addison" the right which they may have had to damages emanating from that proceeding, so far as it might have been unjust, always taking into consideration the resistance of the captain to the replacement which was offered him.

Hence it follows that it would be the *chargé d'affaires* of France alone who would have the right to protect the liberty of the mariner, if he should have been embarked in the "Chile" against his will. If on the contrary, he had voluntarily embarked in that vessel, it would be natural that he should be obliged to comply with his contract, and it is probable that the *chargé d'affaires* of France would believe himself called upon to solicit the discharge of the mariner, in that case.

The undersigned will be permitted to observe, before concluding, that your excellency, who finds my observations concerning the captain of the "Addison" very severe, after his inexplicable conduct in the act of the visit, and the non-acceptance, also inexplicable, of the replacement of the mariners, is pleased, notwithstanding, not only to suppose, but to affirm, that the maritime governor went on board of the "Addison" with the pretext of inquiring into certain complaints of the mariners, but with the real object of transferring four mariners from that vessel to the "Chile," which your excellency also supposes were destined to complete the crew of that vessel. The adopting as a fact a supposition which is in contradiction to the acts of the authorities of Valparaíso, and which the undersigned has rejected, does not manifest a very conciliatory spirit. It is only by viewing the facts under this mistaken aspect that has it been able [it has been able] to elevate an ordinary act of local jurisdiction to the rank of

an offence to the North American flag, to convert into an injury to the United States a proceeding which, at the most, could only be sustained as a damage to the interests of a North American. Only under this same mistaken aspect could allusions have been made by your excellency, which the undersigned will abstain from characterizing, but which certainly are not very well calculated to strengthen the harmony and friendly relations of the United States and this republic, and which, I am sorry to say to your excellency, tend to draw diplomatic discussions from their proper grounds.

My government, in justification of itself, has believed it to be its duty to make an exposition of the principles of law relative to this painful affair.

They have been sustained to a great extent by authorities which ought to be particularly acceptable to your excellency, and by the practice itself of the United States, at least in its relations with Chile; but your excellency will not, on that account, believe that my government, assured of reciprocity, will not be disposed to fix ample and liberal bases, which, being amended by the laws and practice of other nations, would place foreign commerce in the ports of Chile upon a footing which would avoid in future complaints and disputes similar to the present.

My government will always promote with the greatest interest whatever tends to strengthen the bonds of friendship which unite it with the United States by means of reciprocal concessions, dictated by the interests of both countries.

I avail myself of this opportunity to offer to your excellency anew the assurances of my most distinguished consideration.

ANTONIO VARAS.

To the ENVOY EXTRAORDINARY AND MINISTER

PLENIPOTENTIARY of the *United States of America*

near the government of Chile.

[Translation.]

[No. 366.]

HEADQUARTERS OF THE NAVY,
Valparaiso, March 21, 1851.

SIR: In answer to your note of yesterday, relative to the "Addison," I have to state, in regard to the first point comprehended in it, that there was no such artifice, nor even the idea of it, to obtain sailors for the "Chile," since on the same day of the reclamation four sailors were offered to the "Addison" in place of those taken, and that if there had existed such a necessity of sailors for the "Chile," it would have been easy for me to transfer four from the other vessels or from the arsenal.

May God protect your excellency.

MANUEL BLANCO ENCALADA.

The MINISTER OF STATE

in the Department of Foreign Relations.

A true copy:

J. MANUEL HURTADO,

First Officer of Foreign Relations.

[Translation.]

OFFICE OF THE CRIMINAL COURT AND OF THE
AUDITOR OF THE NAVY, *Valparaiso*, April, 12, 1851.

About the middle of October last, while you were commandante of the frigate-of-war "Chile," four Chileno sailors were transferred to her from the whaler "Addison." You will please state the circumstances which led to that transfer; if the captain of the "Addison" agreed to it as a means of correcting the conduct of the sailors, and if the transfer was effected in a boat belonging to the said "Addison."

May God protect you.

JULIAN RIESCO.

To DON RAMON CABIESES,
Captain of the Port.

VALPARAISO, April 20, 1851.

To the Judge of the Criminal Court:

Sir: In virtue of the foregoing communication, requiring information about the transfer of four sailors from the whaler "Addison" to the frigate "Chile," I state as follows to your worship:

On the 15th of last October, the captain of the port, accompanied by the captain of the North American whaler "Addison," came on board, in the boat belonging to the captaincy of the port, and the former made me an offer of four sailors whom the latter, in whose presence I was, wished to put on board of a vessel of war as a punishment for insubordination. I accepted them; and in the act, a whale boat of the "Addison" came alongside, bringing them and their baggage. The captain of the "Addison" then said that he would not have disembarked them if they had not been admitted on board of the "Chile."

On my expressing a desire to know the qualities of the four sailors, in order to rate them, the captain pointed out two who could discharge the duty of seamen, and the other two who were only landmen; but he answered me, "all of them are very lazy."

I also asked him if they had anything due them on board, or were in debt; and he said to me that each of them had had an ounce of gold advanced in Talcahuano, but that in the voyage to this port they had taken a whale in which they had a share, so that their accounts would be nearly square; but that notwithstanding, "to-morrow," he said to me, "I will make out their accounts and let you know."

The captain afterwards expressed a desire to see the ship; and, accepting my company, we took a walk around the decks and through the cabins; when we arrived at my cabin, I invited him to take a glass, which he did, showing to me in this way his gratitude, or his

tacit consent to the course adopted. This is all that occurred on board of the vessel that I then commanded.

RAMON CABIESES.

Esta conforme :

J. MANUEL HUNTADO,

Official primero de Rel. Extra.

[Translation.]

[No. 591.]

HEADQUARTERS OF THE NAVY,
Valparaiso, May 18, 1850.

SIR: I transmit to your excellency the judicial information obtained for the verification of the facts relative to the transfer of four Chilean sailors from the North American whaler "Addison" to the frigate "Chile," in October last. On doing this, your excellency will permit me to give, although it may be only a repetition of what I have already said, some details relative to this subject, which corroborate the testimony.

Your excellency knows that, in October last, the captain of the port, Captain Orella, made known to me that, on board of an American whaler in the port, there were four Chileans who did not wish to work, and who complained of the bad treatment of the captain. I said to Captain Orella, that if they had no contract, and did not wish to fulfil their duties, he should send them to the "Chile," by way of correction, and, it being well understood, with the consent of the captain, ("*y bien entendido el consentimiento del capitan.*") In effect, the captain of the vessel and the captain of the port went on board together; and the latter says that he made the greatest effort to persuade the sailors to remain on board the "Addison." The sailors alleged bad food and other motives; and the captain showed himself satisfied that these men should be transferred to the "Chile," and, in effect, the said captain carried them on board in his own boat, and there, on board of the frigate, showed satisfaction, or at least gave no sign of disgust. The boat's crew of the captain of the port give testimony on these points; and it must be taken into consideration that they understood English, and comprehended the conversation which took place between Captain Orella and the captain of the "Addison." Captain Cabieses, at the time commander of the "Chile," testifies also on these facts, as also does the purser Don Enrique Garcia, as to the character in which he received those sailors on board, and how he entered them on his books. The event which gave place to the claim occurred, as is seen, on the 15th October. As Captain Orella testifies, on the night of the same day on which the consul complained—that is, the 16th of October—the captain had already at his disposition four sailors in place of those who, on account of being rebellious, were transferred to the "Chile," and whom this vessel carried on her voyage to Talcahuano. The captain, encouraged, then, according to information received by those very individuals, F. Gabler and Russel Loring, of the house of Loring Brothers & Co., whose declara-

tion gives motive for the new claim of the American minister, did not now wish to receive the sailors who were offered to him, in order to found his claims for delay, damages, and losses. The "Chile" arrived in Valparaiso on the 2d of November, and, immediately on her arrival, the same four sailors who were taken from the whaler were put at the disposition of the consul, and they were not accepted.

In the meanwhile, the books of the custom-house show that the true cause of the delay of the "Addison" in sailing from Valparaiso was nothing else than that she was trading in the port, as is proved by the books of the custom-house, where it is seen that, until the 5th of November, policies were issued for the disembarkation of oil from the "Addison."

Supposing that these data may be interesting, I repeat them with this motive, calling the attention of your excellency to my notes of the 17th of October, 1850, No. 1009; of the 22d of the same month, No. 1016; of the 8th of November, No. 1068; of the 12th of the same month, No. 1094; and of the 21st of March last, No. 366.

May God protect your excellency.

MANUEL BLANCO ENCALADO.

To the MINISTER OF STATE *in the Department*
of Foreign Relations.

A true copy :

J. MANUEL HURTADO,
First Officer of Foreign Relations.

[Translation.]

On the twelfth of the same month and year, (April, 1851,) appeared before me Pedro Barraza, belonging to the boat of the captaincy of the port, who, being sworn in due form, promised to tell the truth upon what he knew and what should be asked him; and being questioned in regard to what happened in October last in relation to four sailors who were transferred from the whaler "Addison" to the national ship-of-war "Chile," said: Four Chilean sailors who were on board of the "Addison" complained to the captain of the port, at that time Commander Don Manuel Hipolito Orella, of the bad treatment which they said they received on board of said vessel. The captain of the port before mentioned went on board of said vessel and heard the complaint of the four sailors. He then commenced to advise them that they should remain in the whaler; but as they remained obstinate, the captain of the port spoke with the captain of the "Addison," and they agreed to transfer the four sailors to the "Chile." The captain of the "Addison" not only showed deference, but with hearty good will embraced this arrangement; in proof of which, he caused the four sailors, with their equipage, to be carried in one of his own boats.

This is all that I witnessed, and the truth that I have promised, under oath; which, having been read to me, I certify.

I am twenty-six years of age, and cannot sign my name. His worship did it with me; to which I certify.

RIESCO.

Before me:

MARTINEZ.

On the same day Manuel Lopez, also one of the sailors of the boat of the captaincy of the port, was sworn; and being interrogated in like manner, gave exactly the same testimony as the former, for which reason the declaration in writing was omitted. He is twenty-seven years of age, and did not sign because he did not know how, and his worship, the judge, did so. To which I certify.

RIESCO.

Before me:

MARTINEZ.

In continuation, Juan Quiñones, sailor of the boat of the captaincy of the port, was sworn; and having testified the same as the two others, without any difference whatever, the writing of the declaration was omitted. He is eighteen years of age, did not sign because he did not know how, and so the judge signed. To which I certify.

RIESCO.

Before me:

MARTINEZ.

Immediately Pedro Vergava, sailor of the boat of the captaincy, was sworn; and having stated exactly the same as the others, the declaration was omitted. He is twenty-two years of age, did not sign because he did not know how, and so the judge did it. To which I certify.

RIESCO.

Before me:

MARTINEZ.

A true copy:

J. MANUEL HURTADO,
First Officer of Foreign Relations.

Translation.]

On the third of May, Don Enrique Garcia, purser of the frigate "Chile," took oath, that is to say, promised to tell the truth, and stated:

On the 15th of last October, four sailors were transferred from the whaler "Addison" to the "Chile." I was at the time very busy, and did not know how or by whom the transfer of the said sailors was made. I do know, indeed, because they themselves so stated some days afterwards, that they were badly treated on board of the "Addison;" and that the frigate "Chile" had, at the date to which

I have referred, enough sailors for the service. I confirm what I have said. I am twenty-three years old; and he signed, (*i firmo.*)

ENRIQUE GARCIA.

To which I certify:

HERQUINIGO.

Before me:

MARTINEZ.

Esta conforme:

J. MANUEL HURTADO,
First Officer of Foreign Relations.

[Translation of copy in printed form.]

DEPARTMENT OF MARINE OF VALPARAISO.

Be it hereby known that I, the captain of ———, received on board of my vessel, in the class of ———, with the pay of ——— to the individual ———, citizen of the republic of Chile, and I solemnly bind myself, in the presence of the captain of the port of ———, to pay to the said individual the salary stipulated, and to maintain him and treat him as if he were a native of ———, the sailor binding himself to fulfil, truly and legally, the duties of his office. I bind myself, besides, to return the sailor ——— to Chile as soon as the voyage is concluded (with the aid of God, and in case the sailor should not die or spontaneously abandon the vessel,) or to pay his return passage to Chile; and in case of not doing so, I can be compelled to by this bond, on the requisition of the consul of Chile, if there should be one in the port to which I am bound, or wheresoever I should put in, by the person interested, or by the justice of the place to whom the person interested should have recourse. In faith of which, I sign three of the same tenor as the present compromise—one for myself, another for the sailor, and another which will remain in the department of marine for whatever may occur; the present document being signed by the parties, and signed and sealed by the captain of the port in ———.

—————, 185 .
(Signature of the captain of the vessel) ———.

(Signature of the sailor) ———.

—————, (Signature and seal of the captain of the port.)

[P. Translated copy.]

SANTIAGO, May 18, 1852.

The undersigned, minister of foreign relations of the republic, has had the honor to receive the note of the minister plenipotentiary of the United States, dated the 17th instant, in which he calls attention anew to the case of the American whaler "Addison," and in which he manifests his desire to profit by the return of the courier who has brought

communications for the American legation from Washington, in order to remit to his government the answer referred to in the note of the 16th of last March.

The undersigned regrets that he did not save Mr. Peyton the disagreeable necessity of requesting an answer, ("*de exiger por una contestacion*") which, by waiting twenty-four hours, he would have had in his hands; and regrets that attention to subjects of a different kind, which are unnecessary to specify, and even inevitable interruptions in copying, have, very much to the regret of the undersigned, delayed the remittance of an answer.

The undersigned sends with this the answer required, ("*exigida*") and does not permit himself to doubt that Mr. Peyton will be satisfied that his government has given its attention to this subject, with all the promptitude that its many occupations have permitted, and that the reasonable expectations of Mr. Peyton have in nowise been frustrated.

I take this opportunity to reiterate to your excellency the high esteem and consideration with which I have the honor to subscribe myself, your excellency's attentive and obedient servant.

ANTONIO VARAS.

Mr. Peyton to Mr. Webster.

[No. 38.]

LEGATION OF THE UNITED STATES,
Santiago, Chile, June 28, 1852.

SIR: Having carefully examined the last note of Mr. Varas, minister of state and foreign relations of Chile, relative to the case of the United States whale-ship "Addison," I feel called on to make a reply thereto, for the purpose of correcting certain errors and misconceptions of the minister in relation to my argument, and with a view to a proper understanding of the laws of Chile upon which he relied. I herewith forward the copy of a note which I addressed the minister, requesting him to furnish me a more particular reference to his authorities, marked A, to which I have received no reply. From the enclosed copy of a letter written to me by C. De Ronceray, the clerk of William Duer, esq., United States consul for Valparaiso, by the direction of the consul, marked B, it would appear that I was correct in supposing that the order or decree, to which reference was made by the minister, requiring bonds for the return of Chilean mariners shipped in her ports on foreign vessels, was issued after (more than six months after) the affair of the "Addison." You will observe the pointed manner in which the minister refers to an alleged omission, on my part, in quoting a passage of your note to Lord Ashburton in relation to the case of the "Creole," when, in fact, there was no omission; but on the contrary, I quoted the whole paragraph, including the portion alluded to by him, just as he has done. The tone of the minister's note will not escape your notice, which is not at all kind or conciliatory. In fact, the same tone may be observed in some

of his previous notes; and on the occasion of the personal interview which I attended, on his invitation, at the Foreign Office, 28th of August last, the minister indulged in a course of remark which was wholly inadmissible; so much so, that I felt constrained to demand of him, on the spot, an explanation, when he disclaimed any intention to insult me, which I at once accepted as satisfactory, and should not have alluded to it except in connexion with the extraordinary tone of his note above referred to. It has been my constant endeavor to cultivate amicable relations with the authorities here—no easy matter, owing to the peculiar temperament of the minister, who, owing to causes beyond his control, is not familiar with the conventional rules of society, nor the courtesies of diplomatic intercourse; on this account, and for other obvious reasons, I have borne with the minister's peculiarities, and am disposed to do so as long as the same may be done consistently with the respect which is due to my official station as the representative of the United States at this capital.

I have the honor to be, very respectfully, your obedient servant,
BALIE PEYTON.

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

A.

LEGATION OF THE UNITED STATES,
Santiago, Chile, June 16, 1852.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, having endeavored in vain to obtain the authorities quoted by his excellency Señor Don Antonio Varas, minister of state and foreign relations of Chile, in his note of the 29th of April, unwilling as he is to encroach upon the valuable time of his excellency, has to request that his excellency will do him the favor to designate the said authorities by a more particular reference to book and page; and that his excellency will also cause to be furnished to him a copy of the order issued by the commander-general of marine to the maritime governors of the republic, to the effect that when Chileno mariners enter the service of a vessel, it shall be under the guaranty of a formal contract, a model of which was furnished them, and accompanied the said note of his excellency, it being the order referred to by his excellency in his report to the national Congress, bearing date the 7th of August, 1851.

The undersigned is very desirous of being correctly informed as to the date of the said order, as well as its true purport, and correctly to understand the laws of Chile relied on by his excellency, as the same are intended not only for his own use, but for the information of his government.

The undersigned takes this opportunity to reassure Señor Don Varas of his distinguished consideration.

BALIE PEYTON.

His Excellency SEÑOR DON ANTONIO VARAS,
Minister of State and Foreign Relations of Chile.

B.

VALPARAISO, *June 18, 1852.*

MY DEAR SIR: Since dropping my letter of this day into the post office, I have ascertained that in April, 1851, the minister of marine passed a note to the intendente of Valparaiso, renewing the order to furnish Chile sailors, bound for foreign voyages, in foreign bottoms, with a contract, &c., &c.; which note was transcribed by the intendente, on the 6th of May, to all captains of ports, ordering them its observance; this note was not published.

The above information was obtained from the captain of the port himself, who showed the letter of the intendente to the person getting me the above information.

Very respectfully, your most obedient servant,

C. DE RONCERAY.

Hon. BALIE PEYTON,

United States Minister, Santiago.

Mr. Peyton to Mr. Webster.

[Extract.]

[No. 38.]

LEGATION OF THE UNITED STATES,
Santiago de Chile, July 13, 1852.

SIR: * * * * *

I have received no reply to my note of the 16th of June, addressed to the minister of foreign relations, requesting a more particular reference to his authorities relative to the case of the "Addison." * *

BALIE PEYTON.

Hon. DANIEL WEBSTER,

Secretary of State of the United States, Washington.

C.

[Translation.]

SANTIAGO, *July 29, 1852.*

I transmit to your excellency a sheet of paper, on which are particularly specified the authorities cited in my note of the 29th of April, and a copy of the order issued by the commander-general of marine to the maritime governors, on the 30th of November, 1849, providing that contracts of shipment of Chilean mariners, on foreign vessels, entered into in the ports of the republic, are to be written out conformably to the model, a copy of which I have heretofore transmitted to your excellency

Having thus replied to your excellency's note of the 16th of June, I have the honor to offer anew to your excellency, the assurance of the high and distinguished consideration with which,

I am, your excellency's very obedient servant,

ANTONIO VARAS.

To the ENVOY EXTRAORDINARY AND MINISTER

PLENIPOTENTIARY of the *United States of America*.

D.

[Translation.]

Copy of a Circular addressed to the Maritime Governors of Chile.

OFFICE OF THE COMMANDER-GENERAL OF MARINE,

November 30, 1849.

In respect to the shipment of Chileno mariners on foreign vessels, you ought to bear in mind that the government of Chile strictly enjoins that you abstain from all interference towards Chileno mariners who may be legally serving under a foreign flag. But as to those who embark and contract in the ports of its jurisdiction, they ought to do it strictly by means of a contract, a model of which accompanies this, which may prevent as far as possible the abuses which are committed, and which occasion frequent demands from our consuls in foreign countries, and which force the treasury to considerable expenses in assisting said mariners, and providing for their return to their country.

SALAMANCA,

Capitan de Frigata i Comandante Accidental.

A true copy :

JOSE MARALEDA,

P. A. del S. Secretario.

A true copy :

JUAN RN. CASANOVA,

Chief Clerk.

[Translation.]

Works to which reference is made in the note addressed to Mr. Peyton on the 29th of April, 1852 :

Paragraph 3, Wheaton's Elements of International Law, 3d edition, part 2, chapter 2, p. 169.

Paragraph 4, Wheaton's Elements of International Law, 3d edition, part 2, chapter 2, pp. 157 and 150.

Paragraph 5, Wheaton's Elements of International Law, 3d edition, part 2, chapter 2, pp. 152 and 153.

Paragraph 6, Wheaton's Elements of International Law, 3d edition, part 2, chapter 2, p. 170.

Paragraph 7, Kent's Commentaries on American Law, edition of 1832, vol. 1, part 1, section 2, pp. 42 and 43.

Paragraph 8, Pardessus "Droit Commercial," (Commercial Law,) edition of 1842, vol. 6, part 7, book 6, chapter 4, section 2, pp. 286, 289, and 290.

Paragraph 9, "Novissima Recopilacion," (latest abridgment,) law 6, title 11, book 6.

Paragraph 12, Elliott's American Diplomatic Code, edition of 1834. Points on principles decided in the United States courts, vol. 2, p. 304, reference 308; p. 306, reference 326; p. 341, reference 607, Cranch's Reports of cases argued and adjudged in the Supreme Court of the United States, edition of 1816, vol. 7, p. 136.

Paragraph 15, "Novissima Recopilacion," (latest abridgment,) law 6, title 11, book 6.

Paragraph 16, Wheaton's History of the Law of Nations, edition of 1845, p. 731, and the following pages to 734.

Paragraph 23, American State Papers, edition of 1817, vol. 8, p. 495.

It is a true list of the works cited:

FRAN. L. BARNARD.

Mr. Peyton to Mr. Webster.

[Extract.]

LEGATION OF THE UNITED STATES,
Santiago, Chile, September 13, 1852.

SIR: * * * * *

I also informed you of a letter received from Samuel Eckell, esq., marked L, M, N, &c., United States consul for the port of Talcahuano, together with the translation of a correspondence between him and the maritime governor of that place; from which you will perceive that the order or decree, requiring bonds from the masters of foreign vessels who should ship Chile mariners in her ports, was issued after the affair of the "Addison," and consequently has no relevancy to that case. * * * * *

BALIE PEYTON.

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

L.

UNITED STATES CONSULATE,
Talcahuano, August 11, 1852.

SIR: Upon receipt of your communication under date of August 2, I addressed a letter to Don Diego Larenas, "*gobernador de la plaza,*"

requesting the information that you desired in regard to the order of the Minister of Marine of the month of April, 1851, regulating the shipment of Chileno mariners on foreign vessels. Enclosed I send you a copy of my letter to the governor, his reply, with a form of the bond given in the port of Talcahuano by American shipmasters for the return of Chilean seamen; also a certified copy of the order from the Minister of Marine, under date of May 6, 1851.

The authorities in this port are enabled to furnish no other information upon the subject than what is here enclosed.

Hoping that it may be entirely satisfactory, I remain, very respectfully, your excellency's obedient servant,

S. ECKELL.

Hon. BALIE PEYTON,

United States Minister, &c., &c., Santiago, Chile.

M.

CONSULATE OF THE UNITED STATES,
Talcahuano, Chile, August 10, 1852.

SIR: As bonds are exacted in this port from the masters of American vessels for the return to Chile, or satisfactory provision for Chilean seamen embarking on such vessels in this port for some time past, and as said vessels are refused clearance until such bonds are executed, which has led, on several occasions, to delays and inquiry into the origin and nature of said bond, I have the honor to request that you will be pleased to furnish me with an official copy of the bond required, and a statement of the date on which instructions to execute it were received in this port, and from whom received, as I wish to forward such information to my government.

As this matter affects very seriously the interests of American vessels visiting Talcahuano, I feel assured you will excuse the trouble of furnishing me the information.

I have the honor to be, sir, your very obedient servant,

E. ECKELL, *U. S. Consul.*

To Don DIEGO LARENAS,

Governor, &c., Talcahuano.

N.

(Translation.)

[No. 207.]

GOVERNMENT OF THE DEPARTMENT,
Talcahuano, August 11, 1852.

In answer to your note of yesterday's date, I enclose the copy that you ask in your communication, with the supreme decree relating to contracts required to be made in the shipment of Chilean sailors on board of foreign vessels, in order that you may transmit them, as you

say, to your government. I also enclose two printed copies, which contain the text of the contracts for the same purpose, with which I have answered your note referred to.

God protect you.

DIEGO LARENAS.

To the CONSUL of the *United States*.

O.

[Translation.]

[No. 545.]

COMMANDANCY GENERAL OF MARINE,
Valparaiso, May 6, 1851.

The minister of Marine, under date of April, communicates what follows:

In an official communication of last month, in reference to a reclamation made on him by six Chilean sailors belonging to the American whaler "Adeline Gibbs," the consul of this republic in Callao says to me, among other things, the following: In order to avoid for the future the occurrence of these events, it would be proper that the captains of ports employed in the republic should not permit Chilean sailors to leave on such long voyages, or even on shorter ones, without giving to each of them a paper, even though it be a small one, signed by the captain of the vessel on board of which they may embark, which shall specify the time and conditions agreed on. Most of the sail and steam merchant-vessels which navigate the Pacific, receive on board at least a quarter part of Chilean sailors in their crews, and it is rare that one arrives at this port without abandoning some of them; or if they, in order to better their position, wish to leave, they are obliged to remain, under pretext of the right of the flag or some other, with no other view than to contradict and oppose them. If they had any document of their contract, it is clear that they would be free from these arbitrary annoyances which are so prejudicial to them, and which cost so much to resist.

To the Maritime Governor of *Concepcion*:

I send you a copy in order that, in pursuance of the order of the supreme government, the suggestion of the consul, which is in conformity with what ought to be done, may receive in the port of your jurisdiction punctual fulfilment, not permitting Chilean mariners, for any reason whatever, to embark on board of foreign vessels without the corresponding contract made before you, of which there must be three copies—one for the captain contracting, one for the sailor contracted for, and the third must be sent to this office.

God protect you.

MANUEL BLANCO ENCALADA.

CAPTAINCY OF THE PORT OF CONCEPCION,
Talcahuano, June 2, 1851.

The maritime subdelegado of Tomé will take a copy of the preceding official communication and decree, and return the original to this office.

GUILLERMAS.

Received and copied, Tomé, June 11th, 1851

CARLOS ROZZI.

Mr. Peyton to Mr. Webster.

[Extract]

LEGATION OF THE UNITED STATES,
Santiago, Chile, September 29, 1852.

SIR: * * * * *

I shall be greatly obliged for your views in this case, and also in that of the "Addison." As to which last mentioned case, it appears to me that the immediate discharge of the Frenchman from the service of Chile should be demanded and enforced.

I remain, very respectfully, &c., &c.,

BALIE PEYTON.

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

Mr. Peyton to Mr. Marcy.

LEGATION OF THE UNITED STATES,
Santiago de Chile, June 29, 1853.

SIR: I avail myself of the opportunity offered, by the return of William G. Delano, esq., to the United States, to transmit a copy of my note to Mr. Varas, the minister for foreign relations of Chile, relative to the case of the United States whale-ship "Addison," from which four mariners were forcibly abducted in October, 1850, bearing date the 1st of May, 1853.

I deemed the case of sufficient importance to justify a review of the correspondence which has heretofore taken place concerning it; and hence the voluminous character of my note.

I hope it may be convenient for you to bestow some attention on the interest of our citizens who visit the waters of Chile, as it is evident that, without the interposition of our government, there is neither protection nor safety for them. I submit to your better judgment whether it is not due alike to the honor of the flag and the rights of the Frenchman abducted from the Addison, that a peremptory de-

mand should be made by the United States on this government for his immediate discharge from the naval service of Chile. * * * *

BALIE PEYTON.

Hon. W. L. MARCY,

Secretary of State of the United States, Washington.

LEGATION OF THE UNITED STATES,
Santiago de Chile, May 1, 1853.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America near the government of Chile, immediately on its reception, forwarded, by a special bearer of despatches, to his government a translation of the note which his excellency Señor Don Antonio Varas, minister of state and foreign relations of Chile, did him the honor to address him, relative to the United States whale-ship "Addison," under date of the 29th April, 1852, and confidently expected ere this time to have been able to communicate to his excellency the final decision of his government thereon. But owing to uncontrollable events, the sickness and death of the Hon. Daniel Webster, late Secretary of State of the United States, who had the matter under advisement, and the brief space of time which his successors have occupied that office, and other causes which are not necessary to be enumerated, no final action has been taken by the United States in relation to this case.

If it had been possible for the undersigned to anticipate the delay which has occurred in receiving instructions from his government, he would, at an earlier period, have done himself the honor to reply to said note of his excellency, which he now proposes to do, mainly for the purpose of correcting certain errors and mistakes into which he has, no doubt, inadvertently fallen, and of submitting some remarks upon the legal authorities adduced, as well as the written evidence or declarations of witnesses, copies of which accompanied said note.

And the undersigned begs to make his acknowledgments to the minister of foreign relations for the said copies of evidence, which he transmitted to Washington with the copy of his excellency's said note of the 29th April, 1852, and has only to express his regret that it was not compatible with his excellency's ideas of what was due to the interest of Chile to have furnished all the evidence upon which he relies, as the undersigned did to his excellency at the outset and very commencement of this discussion, so that each of their governments might have been in possession of all the testimony on both sides of the case. Inasmuch as his excellency has more than once remarked upon what he conceives to be the undue importance which this case has been made to assume, it may be well, before proceeding to the consideration of his excellency's note, to revert to the early history of the case, in order that it may appear when, how, and by whom, this importance was given to it.

On the 16th day of October, 1850, the undersigned received an official communication from the United States consul for the port of

Valparaiso, complaining that a gross insult had been offered to the flag of the United States by the local authorities of that place in the impressment of four mariners from the United States whale-ship "Addison," and briefly detailed the facts of the case, which were substantially as follows, to wit: That the maritime governor of Valparaiso, on the day previously, the 15th of that month, repaired on board of the "Addison," and took out of that ship four of her crew—three Chileans and a Frenchman—who had been regularly shipped a few days before at Talcahuano: that the maritime governor ordered them immediately on board of the man-of-war "Chile," then under sailing orders, and did sail the next morning at daylight, carrying off the men, and this was done against the wishes and in spite of the remonstrances of the master of the whaler: that this occurrence took place between 2 and 3 o'clock, p. m.; and that while he, the consul, was dining on board the United States ship-of-war "Preble," he was waited on by the master of the "Addison," at the hour of about 5 p. m. the same day, who, in the presence of Commander Glynn, of the "Preble," related the facts and claimed his protection.

It being late before he went on shore, the consul was unable to see General Blanco, the intendente, that evening, but called on him the next morning, in company with Señor Peña, secretary of marine, when General Blanco informed the consul that the difficulty arose from misinformation that he had received from the maritime governor, (as he was called by the consul the captain of the port,) and expressed great regret at the occurrence, at the same time manifesting a desire to retrace his steps.

The consul informed the intendente that he entertained no doubt of the fact that he had been misinformed, as stated, but that he felt it his duty to communicate the facts to the diplomatic representative of his country near this government, and he did so.

By the same mail which brought the consul's official communication, the undersigned received from him a private letter, bearing date also the 16th October, 1850, in which he manifested the warmest interest in, and sympathy for, Governor Blanco, stating, among other things, "I have had a long and interesting interview with Governor Blanco, in which he manifests such a spirit of regret at the unfortunate occurrence, and proposes, so promptly, and in so manly a manner, to make the 'amende honorable,' without compromising his dignity, that I feel it my duty to inform you of it." "He is mortified *beyond expression* at being so badly imposed upon by the misrepresentations of the captain of the port, who told the admiral that the men left the 'Addison' by the captain's consent; and he assures me, if the men were here he would promptly return them to the ship.

"The admiral (General Blanco) informs me that he has four men ready at any moment to go on board, and that he is willing and ready to pay any loss for the detention of the ship, and to place her as far as he can in the condition in which she came into port. I have every reason to believe that the regret of the governor is *sincere and profound*. When an error is frankly acknowledged, I am ever disposed to palliate the fault and forgive the culprit."

Soon after the occurrence, the undersigned received letters of similar

import from private gentlemen of the first intelligence and respectability in Valparaiso, who were concerned lest Governor Blanco might fall under the displeasure of the government, and lose his office in consequence of this affair, in which they pleaded the frank admissions which he openly made of the error he had committed, and attached the blame to the maritime governor, who had deceived him by misrepresenting the facts.

If any apology is considered necessary for this allusion to private letters, the undersigned is sure it will be made for him by his excellency the minister of foreign relations, who made similar references to the advice which he understood was given to Captain Lawrence by some of his countrymen, (perhaps the same to whom the undersigned has alluded,) recommending him to go to sea, instead of Santiago.

But to return to the evidence which the consul gave more in detail on the 27th of October. He says, among other things, "Early the next morning (about 6 o'clock) whilst in bed, I was informed that Captain Lawrence wished to see me immediately. I dressed in great haste and received him. He immediately remarked to me: 'Mr. Potter, the man-of-war "Chile" is under sail and is taking my men to sea.' I replied, 'Hardly, hardly, captain; you must be mistaken; they surely have not done such an act as that; perhaps they have put your men on board of the little Chilean man-of-war lying in the harbor.' 'No, sir,' he replied, 'I tell you they have hurried the "Chile" off this morning before it was light, or a little after, and they have carried my men off.' I then observed to him: 'I am very sorry to hear it; this is going to prove an ugly affair to this government, and as soon as I despatch my breakfast, I will call upon Governor Blanco to know by whose authority it has been done.'"

At half-past 9 a. m. I called upon the secretary of marine, Mr. Peña, who (so early was my call) was, I believe, either just rising or at breakfast, as I waited some time in his parlor before he made his appearance. I called thus early, because I wished not to lose a moment in learning the meaning of this strange proceeding. After apologizing for my early intrusion, I at once laid the whole case before him, and expressed my regret at the unfortunate occurrence, and my unqualified disapproval of the course of the captain of the port, and inquired if Admiral Blanco had given it his sanction and issued such an order? Mr. Peña replied that he had, but added that he (Mr. Peña) understood from the captain of the port, that the four men had not been regularly shipped, or that the captain of the whaler consented to their discharge. I remarked to him that Captain Lawrence not only denied that *in toto*, but, on the contrary, remonstrated in the most earnest manner, on board the "Addison," against the conduct of the captain of the port, of which he had positive and abundant proof." He goes on to relate their call upon the intendente, when the consul stated the facts to him, Mr. Peña acting as interpreter, and says: "His excellency, upon the case being stated so fully and clearly in detail, seemed to be much surprised, and frankly confessed that he had acted upon the information of the captain of the port, and expressed his great regret at the occurrence, and told me if the "Chile" were in the harbor, the four men should be immediately re-

stored to the 'Addison,' assuring me at the same that he had given, or would give, to the captain of the port, orders to have four men ready at any moment to replace them. He frankly admitted that he had given the order to have the four men removed to the 'Chile,' but explained his course by saying that the captain of the port had misrepresented the facts to him. I observed that, from the facts before me, I entertained not a doubt of that. I then took occasion to inform his excellency that I felt it my imperative duty to lay the case without delay before the American minister at Santiago, as the act involved one of those grave questions about which, as a nation, we were exceedingly tenacious. He seemed to regret that necessity, and again remarked that he would have four men ready for the captain of the whaler at any moment.

"When I assured him that Captain Lawrence never assented, *in any manner or form*, to their discharge, as the captain of the port represented, (unless it was attempted to be construed into acquiescence and consent, the fact that they were taken on board of the man-of-war, in Captain Lawrence's boat, which was done, it is true, by the order of the captain of the port, which order Captain Lawrence obeyed, because he thought it best, or that he was bound, after having been told it was the law of Chile to obey his orders,) his excellency Governor Blanco expressed the profoundest surprise and mortification. Mr. Peña was present during the whole interview.

"After closing my interview with Admiral Blanco, I repaired to my office. In a short time Mr. Peña, accompanied by the captain of the port, came in, and there met the captain of the 'Addison.' Mr. Peña, whose sagacity saw, at once, the blunder that had been committed, and evidently desirous of extricating the captain of the port from his dilemma, immediately inquired of me whether the four men had been regularly shipped.

"By referring to the ship's papers I found they were regularly shipped. Mr. Peña then remarked to Captain Lawrence, that the captain of the port had said he (Captain Lawrence) assented to their discharge, which he, Captain Lawrence, flatly denied, before the captain of the port, in my presence.

"The manner of the captain of the port's explanation of the facts, his confused and bungling narrative, not only satisfied the undersigned that there was something wrong in this business, but convinced Mr. Peña also, for he (Mr. Peña) assured me afterwards that 'the captain of the port's manner, in my office, satisfied him (Mr. Peña) that all was not right.'

"Mr. Peña subsequently, I believe upon every occasion upon which we conversed upon the subject, ascribed the whole difficulty to the *misrepresentations* of the captain of the port. In truth, there is something wrong. Why should the captain of the port, at one time, urge in justification of his conduct that the men were not lawfully shipped, and that he consequently had a right to take them out? He no sooner finds that they were regularly shipped, than that plea is abandoned. At another time he urges the plea of ill-treatment, and a want of sufficient food on board, which charges were clearly proved by his own countrymen (a part of the crew on board the 'Addison') to

be false, and that ground is also surrendered; and, finally, in a forlorn effort to save himself, he falls for defence upon what he calls the acquiescence and consent of the master of the 'Addison' to their discharge.

"I think a thorough examination of the conduct of the captain of the port, in this business, will satisfy your excellency that it is not only wholly indefensible, but that he has resorted to the most unworthy subterfuges in his effort to escape from the egregious blunder that he has committed." In speaking of Governor Blanco, he says: "He no sooner discovered the mistake that had been made, than in the most frank and manly manner, he offered to repair the error, as fast and as far as possible." In a letter dated 9th December, 1850, written by said consul to the undersigned, he says: "The order for the transfer of the four men (meaning the said four mariners) was given to the captain of the port before they were taken to the 'Chile.'" But the undersigned will not occupy more time in making further quotations from the evidence, his object at present being to show the character of the case *as presented to him* by the United States consul, and *by him* to his excellency the minister of foreign relations.

Assuming the facts as before set forth to be true, the case was in a nut-shell, plain, simple, and easily settled. All that the government of Chile had to do, was to disavow the acts of the local authorities, the chief of whom had evidently acted under a mistake as to the facts, adopt as its own the frank disclaimer of Governor Blanco, dismiss from office or reprimand the maritime governor, agree to release the Frenchman from involuntary service on the return of the "Chile," and make some trifling remuneration, sufficient to indemnify the ship for her detention, &c., which at that time could not have been a matter worthy of a moment's debate or consideration. Indeed, the more material interests involved in this case are merged in other and higher considerations. Although the voyage of the ship was broken up for the greater part of a month, expenses were necessarily incurred, and several of the mariners deserted in consequence of her delay.

If Governor Blanco had been the officer to whom the undersigned might with propriety have addressed himself, he could not have desired a course more friendly and satisfactory than that which he had already indicated. But, it is not necessary for the undersigned to remind his excellency that he, as the accredited representative of his government in Chile, could address no communication to or receive any explanation from any local officer, but was under the necessity of making his communications to the supreme government through its regular organ, the minister of foreign relations, and in so doing he presented the facts of the case, as they had been communicated to him by the consul of his country, in a manner which he considered most delicate and respectful, abstaining from all comment, and expressing entire confidence that such measures would be adopted by the government of Chile as were due to the honor of the flag and the rights of the citizens of the United States. No course was indicated—everything being left to the sense of justice and friendly disposition of this government, of which the undersigned had no doubt. In fact, it

appeared to him a matter of course that the government would adopt and not repudiate the frank and satisfactory course of the intendente, who he supposed would be called on for a report of the facts of a case in which he had been unconsciously made the chief actor, and who would, as a highly honorable man, adhere to all he had stated or admitted to the United States consul. The surprise of the undersigned may well be supposed to have been very great at the reception of his excellency's note of the 24th of October, in which, so far from sustaining Governor Blanco, the intendente, he takes the side of the captain of the port, and supports him in what he has done, not only controverting facts which were admitted by Governor Blanco and his secretary Mr. Peña, but tendering an issue of law, even admitting all the facts to be as set forth by the United States consul, so vitally important to the rights of other nations that the undersigned could not acquiesce in it, which was nothing less than an avowal, under the plea of local jurisdiction, of the right of impressment, of forcibly abducting the crews, and breaking up the voyages of the vessels of friendly nations who enter the open ports of Chile, where they are invited in pursuit of legitimate commerce, and this, too, in a *time of peace*. This doctrine, so novel, was introduced in a manner not very well calculated to palliate or soften its objectionable features, as it was accompanied by a torrent of denunciation directed towards the American citizen whose ship had been a subject for the exercise of these extraordinary pretensions; and hence arose the difficulties and importance with which the case is now surrounded.

In his said note of the 24th of October, his excellency says, in substance, that his government, having taken steps to inform itself minutely of the circumstances of the case, came to the conclusion that the captain of the "Addison" had not represented the occurrence correctly; that, according to the information received, it appeared that the maritime governor had not attempted to exercise, nor had he exercised, acts of jurisdiction on board of the whaler, but that he went on board as a mediator between the captain and his crew, in company with the captain, and in his (captain L.'s) boat; that he met the United States consul on the mole, to whom he related the object proposed, who made no objection; and the captain of the whaler, so far from opposing it, agreed with the maritime governor in the measure which was taken. The captain showed no repugnance, resistance, or offence, but sent the mariners to the "Chile" in his own boat, and went on board himself and took a glass with the commander, and returned with the maritime governor to the shore, it being agreed upon to receive three seamen the next day that were offered to replace those that had been sent away, the captain not wanting a fourth.

And says: the maritime governor, therefore, took upon himself no authority whatever; he acted only as a simple mediator, impelled by sentiments of humanity, in favor of certain of his countrymen who invoked his protection.

The maritime governor communicated the circumstance to the intendent of Valparaiso the same day (15th) on which he visited the whaler, and, consequently, before having the slightest idea of the re-

clamation meditated by the captain. His account is in accordance with what I have the honor to submit, and has since been confirmed.

The captain went on shore, as has been stated, immediately after the visit to the whaler of the maritime governor, and instead of then directing himself to his consul to complain of the supposed grievance, he awaits the sailing of the "Chile," and afterwards he refuses to receive the seamen who, with the desire of avoiding disagreeable controversy, had been offered to him in lieu, and refuses to sail, in spite of the advice of respectable citizens of the United States resident in Valparaiso.

His excellency then goes on to comment upon the conduct and motives of Captain Lawrence, which he supposes were to get up a false claim against the government of Chile, relying upon the countenance and support of his government to enforce it, &c., &c., and adds: the government is persuaded, from the reliable information it has been enabled to obtain, that the maritime governor has acted in unison with the captain, and has only visited the whaler to perform an office of humanity, and in the character of a conciliator.

I cannot conclude this note without observing (says his excellency) that there would have been no offence against the honor of the American flag, in the conduct of the maritime governor, even if it were granted that it were such as represented by the captain of the whaler; because, as your excellency knows, it is a principle generally recognised, and nowhere more explicitly than in the United States of America, that merchant vessels, whilst lying in the territorial waters of a foreign nation, are subject to local jurisdiction. [Wheaton, vol. 1, part 2, chap. 2, sec. 10, p. 10,]—(quoting a paragraph.) In conclusion of this point, his excellency states: To exhibit clearly the ideas of my government in the matter of jurisdiction over foreign merchant vessels whilst they are in the territorial waters of Chile, your excellency will permit me to add that, on our part, it is not desired that the local authorities should interfere in questions relating to the internal discipline of the said vessels.

The undersigned has endeavored to make a fair statement of the facts as set forth by his excellency, and the grounds upon which he justifies the acts of the maritime governor, even if it be admitted that he forcibly abducted the mariners and placed them to serve in the Chilean navy.

The authorities and course of reasoning by which his excellency attempts to support this position will be noticed hereafter; for the present, the undersigned will confine himself to a review of the facts, premising that with his first note of 19th October, 1850, he laid before his excellency the facts, as set forth by the United States consul in his official communication of the 16th of that month, a favor which his excellency did not reciprocate, as no portion of the evidence upon which he relied was transmitted with his note of the 24th; and, to the present time, the undersigned has not had the advantage of an inspection of the statements of the maritime governor, nor is he informed whether he has made a written statement or merely a verbal one to the intendente, and by him communicated to his excellency, or, if he has made a written declaration, whether or not the same was

under the solemnity of an oath, as were the declarations of Captain Lawrence, the first and second officers of the "Addison," and of seven of the crew. The undersigned enclosed to the United States consul a copy of the note of his excellency, and requested him to prepare the evidence in the case in a formal manner, which he did; all of which the undersigned placed in the hands of his excellency, with his note bearing date the 8th of March, 1851.

In estimating the weight of testimony, and credibility of witnesses, where there is a direct and irreconcilable contradiction, it is material to take into consideration those circumstances and antecedents which accompany the transaction and ordinarily influence the conduct of men. The question is, were the mariners removed from the whaler with the consent of her master, upon an agreement that he was to receive three men, not wanting a fourth, on the next day, or did he remonstrate against the act? Let it be granted that the maritime governor and Captain Lawrence contradict each other directly: which of the two is supported by facts which are admitted, or established by the testimony of men who are above suspicion?

Look at the condition of the two vessels, the whaler and the "Chile." They were both under sailing orders and on the eve of sailing, the "Chile" to leave at daylight the next morning. This his excellency somewhere calls "a fatal coincidence," and so it is. But there is another coincidence more fatal still, and that is the readiness of the whaler to sail that very evening.

The facts that Captain Lawrence had obtained his ship's papers from the consul, that his merchants had cleared his vessel, and that he was urging the settlement of his accounts with the avowed intention of leaving port immediately—all these are facts about which there is no dispute; it is equally evident that great exertions had been made on board to save the oil of the whale captured on entering in and sight of the port, with a view to get back on whaling ground as soon as possible; and that so careful was he of his men, that the captain forbade all communication with the shore, in order that he might not be detained. Is it probable, is it reasonable, that all these facts and circumstances are fallacious? and, at the very moment, that Captain Lawrence would voluntarily part with four of his men, without whom he could not go to sea, being one-eighth of his crew? But it is alleged that he agreed to *swap them off* for three other men whom he had never seen, and whom he had no chance of obtaining until the next day, and rely upon the word of a man he had never seen, until within the hour that the three men should be forthcoming, run down, brought in, and passed over bodily to him, with or without their consent, and this, too, to go on a whaling voyage! Such a story may be credited on the shores of the Pacific, but it would not do to tell in New England. No Yankee whaler is so green as to give a bird in the hand for one in the bush, and four for three at that.

But the maritime governor having manufactured the main fact, undertakes to support it by the invention of a series of corroborating facts, in all which he is equally unfortunate: one is, that he communicated to the consul of the United States, on the mole, immediately before embarking for the whaler, the purpose of his visit; which is

positively disproved by the consul, as is also the story that, instead of complaining to the consul at once, Captain Lawrence awaited the sailing of the "Chile," and then flew from his agreement to receive three men, with a view of making a false claim against this government. This allegation is disproved by the highly respectable gentlemen comprising the firm of Loring Brothers and Co., to whom the captain came, complaining of what had been done, and inquiring for the consul immediately on reaching the shore, and finding that he had gone off to dine on the "Preble," went on board of that vessel without delay, and laid his complaint before the consul, telling the same consistent story that he has ever done.

There is another admitted fact, equally fatal to the capacity of mediator, in which the maritime governor says he visited the "Addison;" which is, that before he ever saw Captain Lawrence, or any of the mariners in question, he applied to Governor Blanco for an order for their transfer to the "Chile." This order he obtained, according to the oft-repeated admissions of Governor Blanco, by a misrepresentation of the facts; and, with this order in his possession, he came to the storehouse of Loring Brothers and Co. inquiring for the captain of the "Addison," whom he then and there saw for the first time. Captain Lawrence was pointed out to him, and he commenced interrogating him about how many Chileans he had on board of his vessel; and finally, in spite of the appeal of one of the merchants then engaged settling his accounts, took Captain Lawrence from his business, under the pretext of going to quiet some matter of dissension concerning the internal economy and discipline of the vessel, but really for the purpose of executing an order, a *military order*, which he had procured from his superior officer, and which, after it was issued, he dared not disobey.

The issuance of this order is an admitted and indisputable fact, of which his excellency was notified by Governor Blanco in October, 1850, soon after the occurrence, as appears by the governor's own statement. And the undersigned would particularly invite the attention of his excellency to this fact, which appears to have escaped his notice. How does it agree with the character of mediator, of conciliator, since claimed for the maritime governor? A mediator or arbitrator is one who, being selected by both parties, acts the part of a peace-maker, or a judge in an extra judicial and unofficial character. This gentleman was selected by neither party, and decided against both. He visited the whaler, it is alleged, to perform an office of humanity towards his oppressed countrymen, and, it must be admitted, that his humanity manifested itself in a singular manner; for, instead of liberating the sufferers and restoring them to their liberty, as they desired, he very kindly sent them to the fleet for an indefinite term. There is a well-established rule of law, to the effect that, if a witness testifies falsely, with a deliberate intention to deceive, as to any *one* material fact, he is discredited, and his testimony may be rejected altogether, except so far as it is corroborated by other evidence; and, assuming that the maritime governor stated what is attributed to him by his excellency, his testimony, according to the above-mentioned rule, should be entitled to no weight or consideration

whatever. It is evident that Intendente Blanco was satisfied that he had been deceived by him; and, when the maritime governor was confronted by Captain Lawrence, in the presence of Mr. Peña, secretary of marine, and the United States consul, there was guilt in his manner, a confusion in his looks, that satisfied both those gentlemen that Captain Lawrence, and not the maritime governor, was the man to be believed; and the opinions of these eye-witnesses, as well as of the intendente, go strongly to discredit his already discredited and improbable story.

It is worthy of remark, that, according to the statement of his excellency in this his *first note*, written a *few days* after the transaction occurred, when the facts were fresh, and the "Addison" still in port, and the government of Chile had taken the steps necessary to inform itself minutely of the circumstances of the case, his excellency makes no allusion to any *informality, defect, or irregularity* in the *contract* of shipment of mariners, but rests the case, so far as the facts were concerned, solely on the consent of Captain Lawrence.

In his note of the 8th of March, 1851, the undersigned replied to the above-mentioned note of his excellency, giving his views at length, and transmitted to him copies of all the papers, evidence, &c., which he had received from the United States consul. He also called the attention of his excellency to the views of the late Daniel Webster, relative to the qualified exemption of foreign merchant-vessels from local jurisdiction while trading in the ports of friendly nations in time of general peace.

In his reply of June 10th, his excellency, after stating that he had waited "until all the facts which it might be *possible* to obtain should be furnished," &c., seems to have modified, if not changed, his views of the facts most materially. The charge that Captain Lawrence delayed making complaint to his consul until after the sailing of the "Chile," is abandoned. The agreement by which Captain Lawrence was said to have bound himself to receive three men, is also given up, and the captain's own statement adopted, to wit: that the maritime governor made a tender of his services to aid him in procuring three other mariners, which offer was declined. And his excellency admits enough to show that there was in fact no consent on the part of Captain Lawrence to the visit or interference of the maritime governor, because he states that they were strangers to each other, and that, having been implored by his countrymen, the maritime governor sought Captain Lawrence, at the store of Loring Brothers & Co., and requested him to accompany him on board the whaler; and if his excellency had only thought to state two additional facts, there would have been a complete coincidence of views as to facts thus far, to wit: that the maritime governor knew that the whaler had cleared and was ready and about to sail that day, and that, at the time he called for the captain, he had already obtained an order for the transfer of the mariners to the "Chile."

These facts, if borne in mind, would doubtless have saved his excellency from certain erroneous deductions and conclusions which he made. He appears to abandon the story of the maritime governor, to the effect that, meeting the United States consul on the mole, he

made known to him, in the presence of the captain, the purpose of his visit, which was *joyfully accepted* by the captain; and he further shows that Captain Lawrence did not, as a matter of fact, consent to the transfer of the mariners, inasmuch as it appears from his own showing that the captain met the complaint of his men by an offer or promise to remove the objection by causing their food to be properly prepared in future, whereupon the maritime governor submitted this offer to the men and urged them to accept it, which was refused, and then he, the maritime governor, determined to send them to the "Chile."

The words "he determined" are not used by his excellency in his said note, but "it was determined."

In his report to the Congress of Chile, of 7th of August, 1851, he uses the word "he." From all which it is very clear that, so far from acquiescing in the transfer, the captain opposed it. It is true that, after admitting all these facts more or less cautiously, his excellency draws from them conclusions directly the contrary to those which the undersigned has done. He seems to think, because the United States consul and Captain Lawrence knew the maritime governor was about to visit the whaler, and did not object to it, that they thereby impliedly assented to his doing any act, however illegal; and that such assent is sufficient to legalize whatever he did; that, as they were apprized of his intended visit in his *official capacity*, therefore they were bound to presume he was about to violate the law, and should have then made their objections, or ever after have held their peace. Now these gentlemen, not being very well acquainted with the local usages, might have presumed the very reverse of this, and supposed that, as he was a public officer, he would be incapable of violating the law and his duty.

And his excellency alleges that Captain Lawrence *loaned* his boat for the transfer of the men to the "Chile," and infers his consent from this act. But that is assuming the fact. He *loaned* the boat as he *loaned* the men under duress, in obedience to the orders of one he felt bound to obey, and it only shows the extent of the duress.

That his excellency shadows forth a new ground not relied on in his note of 24th of October, when the facts were fresh and the vessel in port, to wit: that the captain of the "Addison" never presented to the authorities of Valparaiso the contract which he ought to have made with the sailors transferred to the "Chile," at the time of incorporating them into his crew in Talcahuano," &c., which new position is made to occupy quite a conspicuous place in his excellency's subsequent note. And, in passing, the undersigned will merely remark in this place, as he did in a former note, that by the laws of the United States, the master of an American merchant-vessel entering a foreign port where there is a United States consul, is required to deposit his ship's papers with the said consul, where the papers may, at all times, be seen and examined by the local authorities. And, moreover, in this case no demand was made by the maritime governor, when on board of the "Addison," for an inspection of the ship's papers; he, then, neither alleged nor intimated any such objection as this, nor did the mariners. Not only so; but when, in search of some ground upon which to extricate himself, the maritime

governor, with Mr. Peña, a most intelligent and sagacious gentleman, went to the consul, to whom the papers had been returned, examined them, and found the contract of shipment regular, that point was dropped, and not revived until long after the vessel had sailed carrying off the papers.

But his excellency states a fact, which is of no little weight on this point—this forlorn hope, called in as a last resort—which is, that on the 3d of November, upon the return of the “Chile” into the port of Valparaiso, the intendente made a tender of the identical four men to Captain Lawrence, who, having supplied their places, declined to receive them; which does not accord with this new light that the real ground of removing the men was to relieve them from an illegal contract.

In his note of the 15th of June, 1851, the undersigned made the following pointed allusion to the admission of Governor Blanco, to wit: “It cannot escape observation, that, notwithstanding the strict scrutiny which has been instituted, his excellency does not seem to question the material facts established by the admissions of Governor Blanco, to the effect that upon the application of the maritime governor he issued the order for the transfer of the men from the whaler to the ‘Chile;’ and, secondly, that he was misled by the statements of the maritime governor as to the assent of Captain Lawrence to the transfer of these mariners. These frank admissions of Governor Blanco to the United States consul were a part of the evidence submitted to his excellency by the undersigned, with his note of the 8th of March. Governor Blanco was not likely to make these admissions, and permit them to stand as evidence in the case, unless the facts were undeniable. Governor Blanco has been more than once in Santiago since the acknowledgment by his excellency [of] the note of the 8th of March. He is now present in the city, attending the Chilean Congress as a member of the senate; so that his silence is conclusive as to this portion of the evidence, and sweeps away the entire ground upon which is based the defence of the maritime governor.

“His excellency complains that Captain Lawrence did not produce to the authorities of Valparaiso the shipping articles, or contract with the mariners. The undersigned begs to remind his excellency that according to the laws of the United States it was his duty to place his ship’s papers in the hands of the United States consul, under a severe penalty, which he did immediately on arriving in port. He would further remind his excellency that the question as to the legality of the contract, or regularity of shipping the mariners at Talcahuano, was not raised by the mariners themselves, but was an after-thought, suggested by the maritime governor subsequently to the sailing of the ‘Chile,’ who, with Mr. Peña, called upon the United States consul, at his office, to examine the papers, which were found to be regular. Although it was a question over which, under the circumstances, he had no control, yet the consul exhibited the papers, and placed the question beyond doubt.” * * *

“The undersigned has been unwilling to impute to the government of Chile that which was done by the local authorities of Valparaiso,

knowing how difficult it is for the best-regulated governments to control the actions of their citizens and subordinate officers, and confine them, on all occasions, within the strict limits of international law. But if the government of Chile has determined to approve and ratify those acts, then it is a national concern, and the government becomes the aggressor."

It appears to the undersigned legitimate to infer, from the silence of his excellency as to the alleged admissions and actions of Governor Blanco and his secretary, Mr. Peña, from the fact that there is no statement from these gentlemen denying or in any manner explaining or qualifying what the consul stated as coming from them, that those facts may be considered as admitted.

In his note of the 29th of April, 1852, his excellency sets forth the views of his government concerning certain questions of international law, which had been touched upon by the undersigned in his two notes of 8th of March and 15th June, of the year previous, concerning which his government could not accept the views of the undersigned.

His excellency then proceeds as follows: "One of the questions to which I allude is relative to the right of jurisdiction of the local authorities over foreign merchant-vessels. That this right exists as to foreign vessels in the ports and waters which appertain to the dominions of local sovereignty, appears to me a point incontrovertible, although there may be a variety of opinions as to the limitations and restrictions to which that right is subject." He quotes, then, from Wheaton's *Elements of International Law*, pages 169, 157, 150.

His excellency next quotes from 1st vol. of Kent's *Commentaries*, pp. 42, 43, as to the powers of consuls: "This jurisdiction, (of French consuls in the United States,) observes Kent, was merely voluntary, and destitute of all coercive authority, and at present we have no treaty which concedes to consuls even these limited functions."

"It is seen, then," his excellency observes, "that, in the opinion of this eminent juriconsult, all judicial power of consuls in a foreign country, and, consequently, all limitations of the judicial power inherent in the local authorities within its own territory, cannot have its origin save in a voluntary concession of the local sovereignty."

His excellency then goes into an argument to establish the general principle of local jurisdiction, and the absence of judicial powers in consuls, except to the extent conceded by the local sovereignty. But it seems to the undersigned that his excellency might have saved himself the trouble of an argument, occupying two-thirds of his very elaborate note, if he had observed that the undersigned, so far from advancing the doctrine which his excellency has combatted, conceded, to the fullest extent, the principles laid down by Kent and Wheaton.

In his note of 8th March, 1851, the undersigned states: "It is conceded that the local jurisdiction attaches to private vessels upon their entrance into the ports of a foreign state, and that the complete power of a nation within its own territories is limited only by its own consent, express or implied, the implied consent being no less obligatory than that which is expressed;" and quoted Wheaton's *Elements of International Law*, part 2, p. 141, as follows:

"This consent might, in some instances, be tested by common usage,

and by common opinion growing out of that usage. A nation would justly be considered as violating its faith, although that faith might not be expressly plighted, which should suddenly, and without previous notice, exercise its territorial jurisdiction in a manner not consonant to the usages and received obligations of the civilized world."

The undersigned, in the same note, referred to the views expressed by the late Daniel Webster in a communication addressed to Lord Ashburton about the time of concluding the negotiation which led to the treaty of Washington, and quoted from Mr. Webster's letter the following among other passages: "But, my lord, the rule of law and the comity and practice of nations, go much further than cases of necessity, and allow even a merchant-vessel coming into any open port of another country, voluntarily, for the purpose of lawful trade, to bring with her and over her, to a very considerable extent, the jurisdiction and authority of the laws of her own country, excluding to this extent, by consequence, the jurisdiction of the local law."

"It is true that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of another, is not necessarily wholly exclusive. We do not so consider or assert it. For any unlawful acts done by her *while* thus lying in port, and for all contracts entered into while there by her masters or owners, she and they must, doubtless, be answerable to the laws of the place.

"Nor, if her master and crew, while on board in such port, break the peace of the community by the commission of crimes, can exemption be claimed for them. But, nevertheless, the law of nations, as I have stated it, and the statutes of governments founded on the law, as I have referred to them, show that enlightened nations in modern times do clearly hold that the jurisdiction and laws of a nation accompany her ships, not only over the high seas, but into ports and harbors, or wherever else they may be water-bound, for the general purpose of governing and regulating the rights, duties, and obligations of those on board thereof, and that to the extent of the exercise of this jurisdiction they are considered as parts of the territory of the nation herself. Your lordship will please to bear in mind that the proposition which I am endeavoring to support is, that by the comity of the laws of nations, and the practice of modern times, merchant-vessels, entering open ports of other nations for the purpose of trade, are presumed to be allowed to bring with them, and to retain for their protection and good government, the jurisdiction and laws of their own country. All this, I repeat, is presumed to be allowed; because the ports are open, because trade is invited, and because, under these circumstances, such permission or allowance is according to general usage. It is not denied that all this may be refused; and this suggests a distinction, the disregard of which may, perhaps, account for most of the difficulties arising in cases of this sort; that is to say, the distinction between what a state may do if it pleases, and what it is presumed to do or not to do, in the absence of any positive declaration of its will. A state might declare that all foreign marriages should be regarded as null and void within its territory; that a foreign father arriving with an infant son should no longer have authority or control over him; that on the arrival of a foreign vessel in its

ports, all shipping articles and all indentures of apprenticeship between her crew and her owners or master should cease to be binding.

"These, and many other things equally irrational and absurd, a sovereign state has doubtless the power to do, but they are not to be presumed.

"It is not to be taken for granted, *ab ante*, that it is the will of a sovereign state thus to withdraw itself from the circle of civilized nations. It will be time enough to believe this to be its intention when it formally announces that intention, by appropriate enactments, edicts, or other declarations.

"It is true that it is competent for the British Parliament, by express statute provision, to declare that no foreign jurisdiction of any kind should exist in or over a vessel after its arrival voluntarily in her ports. And so she might close all her ports to the ships of all nations. A state may also declare, in the absence of treaty stipulations, that foreigners shall not sue in her courts, nor travel in her territories, nor carry away any funds or goods received for debts.

"We need not inquire what would be the condition of the country that should establish such laws, nor in what relation they would leave her towards the states of the civilized world. Her power to make such laws is unquestionable; but, in the absence of direct and positive enactments to that effect, the presumption is, that the opposite of these things exists. While her ports are open to foreign trade, it is to be presumed that she expects foreign ships to enter there, bringing with them the jurisdiction of their own government, and the protection of its laws, to the same extent that her ships, and the ships of other commercial states, carry with them the jurisdiction of their respective governments into the open ports of the world; just as it is presumed, while the contrary is not avowed, that strangers may travel in a civilized country in a time of peace, sue in its courts, and bring away their property.

"A merchant vessel enters the port of a friendly state, and enjoys, while there, the protection of her own laws, and is under the jurisdiction of her own government, not in derogation of the sovereignty of the place, but by the assumed allowance or permission of that sovereignty. This permission or allowance is founded on the comity of nations, like the other cases which have been mentioned; and this comity is a part, and a most important and valuable part, of the law of nations, to which all nations are presumed to assent until they make their dissent known.

"In the absence of any positive rule affirming, or denying, or restraining the operation of foreign laws, their tacit adoption is presumed to the usual extent. This is the comity of nations; and it is upon this, as its solid basis, that the intercourse of civilized nations is maintained."

All this, and more of the like character, was quoted and adopted by the undersigned in his note of March 8, to which his excellency replies; and it does appear to the undersigned that a fuller and broader recognition of the principle of local jurisdiction is not to be found in any author than what is conceded by Mr. Webster, which is limited only by the assent, express or implied, of the local sovereignty.

His excellency may well say, "in examining with attention the note of Mr. Webster, I do not find in it an absolute denial of jurisdiction of the local authorities over foreign vessels which visit their ports."

His excellency appears to consider Mr. Webster's argument, above referred to, as favoring a "*novelty*" in the principles and practice of nations, and that said argument was made with a view of inducing Lord Ashburton to recognise this novelty in a treaty; which proposition was rejected by his lordship, but which, if made, would have been binding on the parties only, &c.; and finds that Lord Ashburton, so far from agreeing to, dissented from the principles of international law advanced by Mr. Webster: in all which, his excellency is in error.

At the outset Mr. Webster says: "My lord, the President has learned, with much regret, that you are not empowered by your government to enter into a formal stipulation for the better security of vessels of the United States when meeting with disasters in passing between the United States and the Bahama islands, and driven by such disasters into British ports. This is a subject which is deemed to be of great importance, and which cannot, on the present occasion, be overlooked."

From which, all idea of making a treaty concerning it was out of the question, and Mr. Webster says: "But it is my purpose and my duty to invite your lordship's attention to the general subject, and your serious consideration of some practical means of giving security to the coasting trade of the United States against unlawful annoyance and interruption along this part of the shore. * * *

"For the security of the rights of their citizens, when vessels having persons of this description on board are driven by stress of weather, or carried by unlawful force into British ports, the United States propose the introduction of no new principle into the law of nations. They require only a faithful and exact observance of the injunctions of that code, as understood and practised in modern times."

So Mr. Webster *avored no novelty*. In his reply, Lord Ashburton states, expressly: "Upon the great general principles affecting this case, we do not differ;" and then comes to the practical remedy to which it was the purpose of Mr. Webster to call his attention, and his lordship says: "In the mean time, I can engage that instructions shall be given to the governors of her Majesty's colonies, on the southern borders of the United States, to execute their own laws with careful attention to the wish of their government to maintain good neighborhood, and that there shall be no officious interference with American vessels driven by accident or by violence into those ports. The laws and duties of hospitality shall be executed; and these seem neither to require nor to justify any further inquisition into the state of persons or things on board of vessels so situated, than may be indispensable to enforce the observance of the municipal laws of the colony, and proper regulation of its harbors and waters."

In his reply of the 8th of August, 1842, Mr. Webster, after expressing his regret that Lord Ashburton had not been empowered to make a treaty upon the subject, says:

"The President places his reliance on those principles of public law which were stated in my note to your lordship, and which are regarded as equally well founded and important; and on your lordship's engagement that instructions shall be given to the governors of her Majesty's colonies to execute their own laws with careful attention to the wish of their government to maintain good neighborhood; and that there shall be no officious interference with American vessels driven by accident or by violence into those ports, that the laws and duties of hospitality shall be executed, and that these seem neither to require nor to justify any further inquisition into the state of persons or things on board of vessels so situated than may be indispensable to enforce the municipal laws of the colony and the proper regulation of its harbors and waters."

So it appears that, so far from advocating a novelty, which was rejected, Lord Ashburton recognised the well-established principles of international law laid down by Mr. Webster, and gave that practical guaranty which it was the object of the argument to obtain.

His excellency, after quoting the views of Mr. Webster as above set forth, concluding with "between what a state may do if it wishes, and what it is presumed to do or not to do in default of a positive declaration of its will," says: "My government accepts of this distinction, and the prescriptions of our law, (title ii, book 6, Nov. Rec.) above cited, are referred to."

This law is thus cited in a preceding part of his excellency's note: "Passing, for the present, authorities legal and judicial, the Spanish law prescribes that consuls cannot exercise any jurisdiction, although it may be among subjects of their own sovereignty, except to settle amicably and extrajudicially their differences." (Law 6, title ii, book 6, Nov. Rec.) "It will not be inopportune to remark, that the laws of Spain are in full force in Chile, so far as they have not been abolished. That which I have just cited has not been; consequently, as regards those foreign vessels which participate in our commerce, and which, by the act of visiting our ports, subject themselves to the legislation of the country, there is a special reason for not conceding to consuls the exceptionable jurisdiction referred to."

The relevancy of this law to the case in point the undersigned is unable to discover.

The powers of a foreign consul are in nowise the point at issue. Neither the undersigned, nor Mr. Webster in his said note, presented any such question; and the law appears to be altogether inapplicable. The question under consideration is, Whether the sovereign power of Chile has been exercised, by open and public laws and enactments, in such a manner as to change the general and received principles of the law of nations, so far as to authorize the executive authorities of one of her provinces to impress mariners from on board of foreign and friendly merchant-vessels to supply her navy in time of peace? This is the issue which his excellency tendered in his first note of 24th of October, 1850, and which the note of Mr. Webster was introduced to refute.

Let it be granted that the Congress of Chile, by express statute, have the power to declare to the world that from henceforth the

crews of all foreign vessels entering her ports should be subject to impressment, and empowering the executive officers of her ports and provinces to carry the law into effect: it is not necessary to inquire what would be the condition of this country, nor [in] what relation the enactment of such a law would place her towards the states of the civilized world.

According to Mr. Webster's views, she unquestionably has the power to make such law. And the question arises, has Chile enacted any such law? The answer is, she has not. And in the absence of any direct and positive law to this effect, the presumption is that the very opposite of any such pretension is the law of Chile; because it is the law of nations, to which she has assented, and by which she is bound until, and so far as, she proclaims to the world her intention of changing that code, so far as the same may have operated in her jurisdiction.

His excellency concludes this branch of his argument by stating: "In my opinion, it has been satisfactorily demonstrated that the Chile authorities, and consequently the captain of the port and maritime governor of Valparaiso, were authorized to exercise jurisdiction on board the "Addison" whilst she might be anchored in the waters of Chile.

"Well, he who has the right of jurisdiction, even when in the exercise of it over the persons and property of foreigners, if he departs from the rules of justice, cannot be said to commit an insult against the nation of a stranger.

"An extraction of mariners from a foreign vessel is not an *impressment* when it is exercised as a jurisdictional proceeding, although it might be forced." * * * *

"If there was no voluntary acceptance on the part of the captain of the "Addison," the extraction of the mariners was a jurisdictional act; whether conformable to the rules of justice or not, may be examined at its proper time." * * * *

"The jurisdiction may have been exercised in an agreeable manner; the governor may have ordered the removal of the mariners in an authoritative manner, in consequence of what the parties had said to him; all that can be said is, not that the governor arrogated to himself a jurisdiction which did not belong to him, but that he made an evil use of it—that he took upon himself an unjust proceeding," &c., &c.

The idea embraced in the foregoing extracts occurs several times and in different places, and the undersigned has endeavored to embody and present it fairly, and respond to it in the same spirit.

As the undersigned understands his excellency, he means to say, that inasmuch as the state of Chile, in the exercise of her sovereign power, *might* have directed the mariners to be impressed, therefore the captain of the port or the maritime governor of Valparaiso was authorized to do so, although no law had been enacted by Congress asserting such a right; which is a *non sequitur*.

The assertion of such a right—the exercise of such a power is an attribute of sovereignty, and must emanate from the sovereign *will*, *legitimately* expressed through its constitutional organs.

As for the maritime governor and all other authorities, whether executive or judicial, their powers are limited and prescribed by law, beyond which they cannot go.

All officers in a government like this are the agents, the servants of the people, and the organs and mere instruments of the law; and the moment an executive or judicial officer transcends his legitimate authority, from that moment he becomes a wrong-doer, without any legal excuse or justification.

The undersigned is at a loss to comprehend exactly what meaning his excellency wishes to convey by the frequent use of the phrases "judicial act," "jurisdictional proceedings," &c., &c. Can it be that his excellency intends to say that, because the maritime governor may go on board of a foreign ship in a Chilean port for a legitimate purpose, such as to direct the place of her anchorage, examine her bill of health, seal up the hatches in order to prevent smuggling, collect port dues, to serve a legal process on the vessel or any person on board, or to perform any other legal act while there with impunity; or, that he may, by merely *assuming* to visit a ship for a legal purpose, conceal his real motive, and thereby evade responsibility? Suppose, for the sake of illustration, that an executive officer were, by false pretences, to obtain a process which authorized him to go on board a ship to examine for stolen goods, and should avail himself of the opportunity to perpetrate what afterwards turned out to be his original design—robbery, or any other illegal act: would the writ sanctify the act, on the ground that it was *jurisdictional*?

Suppose in the present case that the maritime governor, instead of sending the men to the fleet, had sent them to the chain-gang, or put them to death: would the act have been jurisdictional—would he have been exempted from punishment? Of course not. Then *jurisdictional* can mean nothing more than legal; and the question still remains, was the act of impressment authorized by the law of Chile? Chile has made no innovation in this respect in the law of nations, which forbids it; and therefore the laws of Chile forbid it.

With a most flattering partiality for American authors and American precedents, which his excellency avowed at the outset of his argument in this case, and has manifested on former occasions, he has cited several decisions of the courts of the different States of the American Union, which the undersigned will briefly notice, avowing at the same time his utter incapacity to perceive their relevancy to the case in hand.

The first is the case of *Gardner vs. Thomas*, reported in 14th Johnson's Reports, page 134, decided in the superior court of New York, in 1817, to the effect following: "The State courts have jurisdiction of actions for torts committed on board of a foreign vessel on the high seas, where both parties are foreigners; for personal injuries are of a transitory nature, and follow the person or forum of the defendant. But it rests in the sound discretion of the court to exercise jurisdiction, or not, according to the circumstances of the case." The next is the case of *Chamberlain vs. Chandler*, decided in the circuit court of Massachusetts, 3 Mason, page 242. "The ad-

miralty has jurisdiction of personal torts and wrongs committed on a passenger on the high seas by the master of a ship," &c., &c.

It does not appear whether the ship or parties were foreign or national.

Next case, of *De Lovie vs. Boit et als*, decided in Massachusetts circuit court, in 2 Gallison's Reports, page 398: "The admiralty has cognizance of foreign maritime contracts."

The next and last case is, the *Exchange vs. McFadden*, in the Supreme Court of the United States, 7 Cranch, pages 116, 136, to the effect "that the jurisdiction of a nation within its own territory is exclusive and absolute. It is susceptible of no limitation not imposed on itself," &c., &c., which in no degree conflicts with Mr. Webster's views before noticed.

Except the last case, upon which the undersigned has already expressed his views, what do these decisions establish? Why, that the States of the American Union have adopted the same policy of most other nations, and permit foreigners, as a matter of comity, to sue in their courts, which are open to them in the same manner as to their own citizens; and, inasmuch as personal actions are of a transitory nature, they follow the person of the defendant, and the suit may be instituted, and he cited to answer in the state and before the court wherever he is found. If it were otherwise, what remedy would there be in any case, whether it be founded in tort or contract, where the cause of action arose on the high seas, and the defendant did not meditate a return to his native country; or if he should, when it would be impracticable for the plaintiff to follow him there? It is supposed the courts of Chile are not closed against foreigners in such cases.

It is true that every independent State may adopt such a course in this respect as it chooses; but a nation that should refuse to the citizens of other nations this privilege, would be deemed as wanting in comity. His excellency inquires: "Are not contracts between captains and mariners essentially maritime?" To which the undersigned responds in the affirmative. They certainly are, and proper subjects for the exercise of *judicial* power and jurisdiction, but not of executive or military jurisdiction. And it was for this very reason that objection was made to the summary, extrajudicial, and illegal proceedings in this case, that a military officer, without a hearing, issued a military order to one of his subordinates, upon the *ipse dixit* of the said subordinate, by which a maritime contract was abrogated, the master of the ship deprived of the right which he had to the services of the men, and the men deprived of their liberty, and sent to a man-of-war as a punishment for a misdemeanor that no one had alleged against them. This is a case in which civilians, in no way connected with the army or navy, have been sentenced and sent off as condemned criminals, without an accuser, a witness, a hearing, or a judge, but, as it were, under the sentence of an *ex-parte* drumhead court-martial.

The undersigned is ready to yield jurisdiction to the judicial tribunals of Chile, and to admit that the courts were competent to hear and determine the complaint of the mariners against the master, alleging an illegal contract in not furnishing them with sufficient

and suitable food, although ordinary complaints with regard to the last point are usually left to be adjusted *amicably* and extrajudicially by the consul, who is presumed to be acquainted with the laws of the ship's country, under which the contract is to be performed.

He will go further, and admit that if, by a special law of Chile, the power of investigating and deciding these subjects had been delegated to any person—the maritime governor, for instance, (if it be constitutional for a military officer to act in such a capacity,)—why then, all such persons had to do was to proceed strictly according to the law, and no one would have complained whether he be a native or foreigner. But the constitution secures to every one the right to be heard, before he is condemned or deprived of his life, liberty, or property—a right of which even the Congress cannot deprive a citizen, if so disposed. But what is the nature of this office of maritime governor, for which his excellency claims such extraordinary powers? In his report to the national Congress, bearing date 1st July, 1852, the minister of war and marine says: “In the absence of the ordinance for the regimen and good government of the department of the marine, the functions of the maritime governor are limited to the sphere of mere naval military functionaries of the executive dependents of the commander general of marine in general, and of the local authority, in a certain way, and in certain determined cases.”

He then goes on to recommend the adoption of an ordinance for the government of the navy, by virtue of which it was contemplated to invest the maritime governors with a limited *quasi* jurisdiction over persons and things,” &c., &c.

According to the constitution of Chile, “chapter 8, of the administration of justice,” article 108, “the faculty of judging civil or criminal cases belongs exclusively to the tribunals established by law.” Neither Congress, nor the President of the republic, can “in any case exercise judicial functions, nor assume the right of deciding pending cases, nor resuscitate terminated processes.”

Article 111. “Judges are personally responsible for bribery, for failing to observe the laws which govern a process, and, in general, for all prevarication or crooked administration of justice,” &c., &c.

Article 160. “No magistrate or person, nor assemblage of persons, can attribute to themselves, not even under any pretext of extraordinary circumstances, any other authority or rights than those which are expressly conferred on them by law. Every act in contravention of this article is null.”

From which, it would seem that neither the maritime governor, nor the commander-general of marine, nor the president nor congress of Chile, can in any case exercise judicial functions.

His excellency has said that this is an admiralty case, inasmuch as the validity of a contract between master and crew is involved. If so, what department of this government has jurisdiction of the question? Not the executive or legislative, but the judicial department of Chile. And the grounds of complaint are, that instead of a fair, regular, and legal trial, according to the laws of Chile, the rights of these persons, both master and mariners, as secured by the law of

nations and the laws of Chile, have been trampled in the dust, in spite of the respect due to the flag which was over them.

His excellency says: "The Chile consul in California, in an official communication of the 27th of November, 1850, informs the government that the authorities of San Francisco adjudged questions between captains and mariners of Chile vessels, to the grave prejudice of masters and owners. Here there is a conduct observed by the authorities of the United States, which is in manifest opposition to the principles which your excellency has labored to sustain. That alone would justify us in assuming jurisdiction over American vessels, even in matters which, according to the opinion of the most eminent publicists, it would be well to reserve to consuls of the respective nations."

To which the undersigned would beg leave to reply, that the nature of the cases, and the kind of jurisdiction exercised over the citizens of Chile, in California, are not set forth with sufficient distinctness to enable him to say whether it was or was not legal and proper. But, judging from the phraseology, "that the authorities of San Francisco adjudged questions between captains and mariners of Chile vessels," &c., &c., the undersigned naturally supposes that the courts of the United States and the State of California were only opened to the citizens of Chile, as they are to the citizens and subjects of all other nations, in which they may litigate their rights, or not, just as may the citizens of the United States. With which, if his excellency finds fault, the undersigned has only to regret it, as it is a principle deeply seated in the very nature of those governments, and which they are not likely to change. But if, as may have happened in the organization of a new government at a remote point, illegal and wrongful jurisdiction has been assumed by those not clothed with judicial power, it seems to the undersigned that the better course would have been to bring those grievances to the knowledge of the government at Washington, and not to resort to a sort of reprisals, by opposing one wrong to another in the first instance, as his excellency appears to think admissible.

His excellency, recurring once more to the facts, says: "It only remains to be observed, that the visit of the maritime governor of Valparaiso on board of the 'Addison' was not a voluntary act on his part; he was induced to it by the mariners in question. He could not omit it without a culpable abandonment of his duty."

On another occasion his excellency represents the maritime governor as being impelled by motives of humanity, and as hastening to the relief of his suffering and oppressed countrymen. Unfortunately, *this position* is in direct antagonism with that assumed by the immediate actors in the affair—Governor Blanco and the captain of the Chile—both of whom agree that the interference of the maritime governor was *against* the mariners, and for the purpose of *correcting* and *punishing* them, and that in so doing they united heartily with [the] tyrant of the whaler. Here is what they state on that point. Señor Don Ramon Cabiesis, at that time commanding the "Chile," and at the time of giving his statement (not on oath,) promoted to the office of maritime governor, says: "On the 15th of October last, the cap-

tain of the port, accompanied by the captain of the North American whale-ship 'Addison,' came on board the frigate 'Chile' in the boat of the captain of the port, and the former (captain of the port) made me an offer of four mariners, whom, as a punishment for insubordination, the latter (captain of the 'Addison,') in whose presence I was, wished to put on a vessel of war. I accepted them, and immediately a whale-boat from the 'Addison,' which conducted them and their things, pulled up alongside."

Why! this gallant officer has here fired a broadside into his excellency's position, stripping it of all the humanity and benevolence with which his ingenuity had invested it.

The undersigned will remark, in passing, that it would appear that one leading, important fact, seems to have been here suppressed between the maritime governor and the commander of the "Chile," to wit: That these mariners had been ordered to the "Chile" by Governor Blanco, commander-general of the Chilean navy, without which order, according to the rules and regulations of that navy, the commander of a ship-of-war could not, he dared not, receive mariners on board his ship.

And yet the maritime governor is represented, by the commander of the "Chile," as suppressing this fact; and in law and in conscience, the suppression of the truth is equally criminal as the utterance of a falsehood. The commander of the "Chile" received the men (*to be punished*) at the request of the captain of a foreign vessel, thereby converting a Chilean frigate into a penitentiary or prison for the correction of offenders.

The commander general of marines, General Blanco, long after the occurrence, and when, as the undersigned will show by-and-by, his memory had failed, states: "Your excellency knows that in last October the maritime governor, Captain Orella, informed me that in the American whale-ship which was in the port, there were four Chile mariners who did not wish to work, and who complained of bad treatment from the captain. I told Captain Orella that if they had no contract and did not wish to fulfil their duties, to send these men to the Chile, by way of correction, it being understood, with the consent and good understanding of the captain," &c., &c. It is not very easy to comprehend what *duties* they owed, if they had *no contract*. Governor Blanco, being conscious of a want of legal authority to issue this order, qualified it with two conditions; first that there was no contract by which the captain could claim their services, and, secondly, the captain was to give his consent to the measure—the rights and wishes of the poor sailors alone were to be disregarded.

In the same communication, directed to his excellency the minister of foreign relations, under date of 18th May, 1851, more than seven months after the transaction occurred, he goes on to refer to what other persons had told him, and to argue the case, and says: "As Captain Orella states, in the night of the same day the consul made complaint, (that was on the 16th of October,) the captain already had at his disposition four mariners, in replacement of those who, for rebellious conduct, had been transferred to the 'Chile.'"

"In the mean time it appears from the books of the custom-house

that the real delay in the 'Addison' in sailing from Valparaiso was not caused by any other motive than that of being in traffic with the place, as the books of the custom-house prove, where it is shown that until the 5th of November policies (landing permits) were extended for landing, from the 'Addison,' whale oil."

General Blanco then calls the attention of the minister to his notes of 17th October, 1850, No. 1009, of the 22d of the same month, No. 1016, of the 8th November, No. 1068, of the 12th of the same, No. 1094, and of the 21st of March, 1851—of the contents of all of which letters, save the one above quoted, and a brief extract from that of the 21st of March, 1851, the undersigned has been kept in ignorance, while he concealed nothing from his excellency, but promptly laid all the documents before him. A certain legal presumption arises from the withholding of the early communications of General Blanco, of which the undersigned might, if necessary, avail himself.

With regard to the erroneous impression which seems to have been made on the mind of General Blanco, to the effect that the only motive for the detention of the "Addison" was that she was engaged trafficking with Valparaiso, as the books of the custom-house show that up to the 5th of November policies or landing permits were granted for landing from her whale oil; these are errors which the undersigned begs leave to correct. Having been informed by the United States consul of the state of the facts, on the return of the "Addison" to the port of Valparaiso, where she touched on her return to the United States, the undersigned requested the captain to explain the landing of the oil referred to, and he states, in his letter of the 21st of November, 1851: "I received your communication, dated 20th, this morning. As regards the oil I sold a short time before I sailed, your supposition is perfectly correct, as I had money sufficient to pay all bills, had I have been permitted to sail as I had intended; but being detained, I was necessarily obliged to either sell oil or give a draft on my employers to meet expenses. Therefore I sold to Mr. H. Vincent one cask of sperm oil, containing one hundred and ten gallons, for which Mr. Vincent settled with me on the 6th day of November, 1851. The oil, I presume, was delivered a day or two previous to the settlement. My first officer is yet with me, and no doubt has in his log-book the quantity of oil delivered and the date; but as to whom or for what purpose said oil was sold he cannot answer, that being exclusively my business. I sold the oil for no other purpose than to meet expenses incurred after the four men were taken, neither did I sell any more than to meet said expenses, with an overplus of \$100, which I always carry for any emergency.

"November 22d.—I enclose, according to your request, the certificate my first officer is able to give. I will simply add, that one item of expense caused by my detention was the desertion of one boat-steerer and one or more hands, whom I must necessarily replace and pay advance wages. The oil in question was sold after my return to this place from Santiago, &c., &c., (which is all that is at all material to the case.)

"T. H. LAWRENCE.

"VALPARAISO, *November 21, 1851.*"

The enclosed certificate is as follows :

"Ship Addison, of New Bedford, now lying at this port, delivered, this afternoon, per order from the captain, one small cask of sperm oil, 110 gallons, to a shore boat which towed it on shore.

"This from the first officer of the ship—Valparaiso, November 5, 1851.

"GEORGE H. CASK."

From the severe strictures made by his excellency on the conduct of Captain Lawrence for visiting Santiago, and spending so much time in preparing his case, it would seem that he, at least, knew what detained him ; and when it is remembered that the oil sold on the 5th of November, which was the only oil sold after the affair of the 15th October, was worth only about one dollar per gallon, it is remarkable that his necessities did not force the captain to sell more than that small quantity.

As to whether the Chile did or not stand in need of mariners, the undersigned will merely remark that her commander is silent on that subject, and no one states that she had her complement of men, but the clerk of the vessel states "that the Chilè had the necessary mariners for the service at the date to which he referred." This is equivocal, as the mariners necessary for ordinary duty, and the full complement to which she was entitled, are quite different.

As respects the argument of his excellency going to show that Captain Lawrence and the officers and men of his ship should be, in some degree, discredited, from the relations in which they stand to the case and to each other, the undersigned admits that in a conflict of testimony the supposed bias of witnesses so situated may, in a greater or less degree, detract from the weight of their testimony. But who else can be supposed to be present under such circumstances, save the master, his officers and crew? So far as a man may be said to have formed a character in so short a time, that of the captain is spoken of most favorably by those who had most to do with him in Valparaiso. The United States consul, in reply to an inquiry addressed to him by the undersigned before he saw Captain Lawrence, says, "you ask in your last communication whether from all you (Mr. Potter) have seen, heard, and believe in relation to the matter, Captain Lawrence is acting in good faith, or is he endeavoring to force a false claim against the government of Chile."

"I beg leave, most unequivocally, to reply that I believe he is acting in good faith," &c., &c. But how stands the case on the other side? If the captain and all on board of the whaler labor under some disadvantage, how much stronger is the presumption against the only other eye-witness to the transaction?

Here is the wrong-doer who has every motive to excuse himself and save his office, (which he seems not to have done,) coming forward to justify himself. Whatever statement he makes is withheld, and no opportunity is afforded of comparing it with other testimony. Governor Blanco and Mr. Peña, with every disposition to favor him, frankly acknowledge his false statements and discredit him; and as

for his boat's men, who rowed him to the "Addison," they seem to be the same who, hanging around the ship, got wind of the dissatisfaction existing among a portion of the crew, and carried the news to the maritime governor, who acted upon it, as is shown by the fact that when he reached the deck of the whaler he was ignorant of the mariners, and called upon his boat's men to point them out. Not a very respectable transaction for the maritime governor; and the manner of testifying on the part of these boat's men is not calculated to inspire any high opinion of their intelligence or independence of character. Pedro Barragas makes his statement, in which he deals more in argument than in facts, and concludes, "I am twenty-six years old, and do not know how to sign, which his excellency does for me."

Next came "Manuel Lopez, also mariner of the boat of the captain of the port, and being interrogated as the former, stated exactly the same, for which reason I omit writing his declaration. He is twenty-six years old, and did not sign because he did not know how, which the judge does himself," &c., &c.

A most remarkable coincidence of years, of knowledge, and ignorance. Exactly the same in all respects; and so of Juan Quiñones and Pedro Vergara. There appear to be the same exactness and uniformity in their swearing as in their rowing. Pedro led off, and the others kept the stroke in most excellent time.

His excellency introduces, rather obliquely to be sure, the idea that the mariners were sent to the Chile as to a prison, there to await their trial under some criminal charge. He says, "and admitting that the captain opposed it, there would be no injustice in the transfer and deposit of mariners in a national vessel of war, made in a provisional manner, and whilst an account of it was made to the commander general of marine, who, as the highest authority, and in a better situation to estimate the occurrence which gave rise to the measure, could determine with more certainty. I do not know the principle of international law, nor the practice of civilized nations which would constitute such a proceeding an injury or injustice."

To which it may be replied that this proposition comes alike in conflict with the laws of Chile and the facts of the case. By the former the commander general of marine was incompetent to take judicial cognisance of charges against these men, even if any had been preferred, much less to send them on a cruise in a man-of-war, instead of to the common jail in order to await their trial. And from the general's own admission, they were sent as a *punishment* for what does not very clearly appear; but they were condemned, sentenced, and punishment was being inflicted when the Chile returned to port, and the men, so far from being brought up for trial, were offered to be returned to the whaler.

But the principal authority upon which his excellency appears to rely, as an excuse for what was done, is introduced by the following observations: "But there are other grave circumstances. The shipment of the mariners in Talcahuano has all the appearance of illegality. For the shipment of a Chile mariner, on a foreign vessel, in our ports, a formal contract between the captain and mariners, drawn up in the

printed model which I have the honor to transmit to you, is made necessary. The document containing this contract was asked of the captain," (his excellency does not say by whom it was asked) "even through the medium of his consul, and it could not be obtained. When this gentleman gave the assurance that, having examined the ship's papers, he found that the mariners had been legally shipped, it was probable that he did not have before him the obligation of formal contract, which I have pointed out, and that he conceived that the signature of an officer of Talcahuano to some one of the papers of the vessel was sufficient. This is at least what results from the investigation made by the order of my government concerning the matter. By all means, the exhibition of the contract was an essential requisite for every reclamation concerning Chile mariners shipped in Chile.

"Chile permits in her territory the shipment of her mariners under the condition of the contract whose model accompanies this. The captain who receives Chile mariners in Chile without complying with this condition infringes Chile laws, and exposes himself to all the consequences of the illegality of the act. The right to promulgate laws supposes the right of having them executed within the territory to which their authority extends, and of taking all the measures necessary to prevent their being infringed or eluded."

To which the undersigned, in replying, concedes the full and ample power of his excellency to enact and enforce within her territories any law she chooses to pass, and that if Captain Lawrence, while within her jurisdiction, violated any law of the country, he was amenable to the local authorities. He, or the consul in his presence, produced the contract when called for by the maritime governor and Mr. Peña, which was found to be legal and regular. This is sworn to by the captain, who is supported by the consul, and not contradicted by Mr. Peña, whose purpose in visiting the consul was to ascertain the truth of this matter. Not only so; but if there had been a violation of law, by a non-conformity in this respect on the part of Captain Lawrence, how could General Blanco, subsequently to the visit of Mr. Peña, his secretary, offer to place other citizens of Chile in the same situation, and finally to restore the four mariners to the captain of the whaler, to be carried off in contravention of the laws of the land?

The undersigned hopes that he may be permitted to say that he has supposed the order or decree requiring the execution of the above mentioned contract was issued subsequently to, and in some measure in consequence of, this very occurrence of the "Addison," and another American vessel, called the "Adeline Gibbs," and he will proceed to assign his reasons (other than those which may be inferred from what has been already stated) for so thinking.

The extract which accompanied his excellency's note of April 29th, 1852, is in the words and figures following, to wit:

"MARINE GOVERNORSHIP OF VALPARAISO.

"This document certifies that I, captain of ———, received on board of my ship in the class of ———, with the pay of ——— to the individual ———, citizen of the republic of Chile; and I solemnly promise before the maritime governor of ———, to pay to said indi-

vidual the stipulated pay, to maintain him and treat him as if he were a native of ———, the mariner engaging to fulfil faithfully and legally the duties of his charge. I bind myself to restore the mariner to Chile, immediately the voyage is concluded, (God permitting, and if the mariner does not die or abandon the vessel voluntarily,) or to pay his passage in returning to Chile; and in case of my not doing so, I may be compelled to it by this document at the requisition of the consul of Chile, if there should be one in the port of my destination, or by the person interested, (the mariner,) at whatever port I may put in, or the magistrate of the place, to whom he may apply. In testimony of which I sign three of the same tenor of the present bond, ('*compromiso*') one for myself, another for the mariner, and another which shall remain in the office of the maritime governor, for the purpose to which it may give rise. The parties signing, and this document being signed and sealed by the maritime governor in ———, 185

(Signature of the captain of the vessel) ———.

(Signature of the mariner) ———.

(Signature and seal of the maritime governor) ———."

His excellency the minister of foreign relations, in his report to the Congress of Chile, bearing date the 7th of August, 1851, after stating *his views* of the facts of the case, goes on to say: "I spoke just now of the irregularity which there was, as it appears, in the contract of shipment of the four mariners who left the '*Addison*' under the circumstances indicated. I will observe, in passing, that equal informalities, concerning this same point, have already given place to lamentable abuses, of which our native citizens who ordinarily compose a large part of the crews of the vessels which navigate the Pacific are the victims."

"According to the official communications from the Chile consul in Callao, the captain of the whale-ship '*Adeline Gibbs*,' was forced, a short time ago, to land there six Chile mariners on account of the proved mal-treatment which he gave them. From investigations which were made with this object, it resulted, that only three of the mariners had been engaged in Talcahuano, and this in a manner very informal, and that the others were taken on board by surprise and force, in spite of themselves, to accompany the vessel.

"Finally, the American whale-ship sailed from Callao, leaving the six mariners on those shores, and without paying them the half of what was due them, under the specious pretext that they had failed in their contracts. To prevent, as far as possible, evils of this kind, the commander general of marine has ordered all maritime governors of the republic, that where national mariners enter the service of a vessel, it shall be under the guaranty of a formal contract, a model of which has been furnished them. It is to be regretted that this salutary precaution has not been thus far punctually observed in all our ports."

From which the undersigned inferred that the order of General Blanco was of recent date.

On the 16th of June, 1852, the undersigned did himself the honor of addressing a note to his excellency, in which he said: "Having endeavored in vain to obtain the authorities quoted by his excellency

Señor Don Antonio Varas, minister of state and foreign relations of Chile, in his note of the 29th of April, unwilling as he is to encroach upon the valuable time of his excellency, has to request that his excellency will do him the favor to designate the said authorities, by a more particular reference to book and page; and that his excellency will cause to be furnished to him a copy of the order issued by the commander general of marine to the maritime governors of the republic, to the effect that when Chile mariners enter the service of a foreign vessel, it shall be under the guaranty of a formal contract, a model of which was furnished them, and accompanied the said note of his excellency, it being the order referred to by his excellency in his report to the national Congress bearing date the 7th of August, 1851. The undersigned is very desirous of being correctly informed as to the date of said order, as well as its true import, and correctly to understand the laws of Chile, relied on by his excellency, as the same are intended not only for his own use, but for the information of his government," &c.

Having received no reply to the above, on the 23d day of July following, the undersigned addressed another note to his excellency, in which he stated, after alluding to the above note: "The undersigned considers it due to the friendly relations existing between the United States and Chile, and which he is most desirous of strengthening, that the information sought for should not be withheld, but that the government of the United States should be put in possession of, and enabled correctly to understand the laws and public ordinances of Chile, which have been relied on by his excellency as a justification of the abduction of the mariners from the United States whale-ship *Addison*," &c., &c.

To the above note, his excellency replied under date of the 29th of July, in substance as follows:

"I enclose to your excellency a memorandum in which is specified with minuteness the authorities cited in my note of the 29th April, and a copy of the order issued by the commander general of marine to the maritime governors on the 30th of November, 1849, directing that the contracts of shipment of Chilean mariners on foreign vessels made in the ports of the republic shall be executed according to the model, a copy of which has heretofore been sent to your excellency," &c., &c.

The following is a copy of the paper enclosed with the foregoing note of his excellency:

[Translation.]

"Copy of a Circular addressed to the Maritime Governors of Chile."

[No. 302.] OFFICE OF THE COMMANDER GENERAL OF MARINE,
"Valparaiso, November 30, 1849."

"As regards the embarkation of Chile mariners in foreign ships, you ought to bear in mind that the government of Chile strictly enjoins that you abstain from all interference with Chile mariners who may be legally serving under a foreign flag. But as respects those

who may contract and embark in the ports of your jurisdiction, they must do so strictly by means of a contract, a model of which accompanies this, which may prevent, as far as possible, abuses which are committed, and which occasion frequent demands from our consuls in foreign countries, and which impose upon the treasury considerable expense in assisting said mariners, and enabling them to return to their country.

“SALAMANCA,

“*Captain of Frigate and temporary Commandant.*

“A true copy :

P. A. DEL S., *Secretary.*

“JOSE MORALED A.

“A true copy :

JUAN R. CASANNENA,

“*Chief Clerk.*”

In comparing the foregoing with the printed form of contract, and finding a striking discrepancy, in the dates &c., of the two instruments, and supposing there must be some mistake about the matter, the undersigned wrote to the United States consuls at several ports in Chile, supposing they might be able to throw some light on the subject. From Valparaiso he received information of an unofficial character, to the effect that the order, a copy of which he had requested of his excellency, was issued by the commander-general of marine, in the month of May, 1851, in pursuance of instructions from the minister of war and marine, issued in April preceding, but that the maritime governor of that port declined to furnish the consul with a copy of the said order.

The United States consul of Valparaiso addressed a note to the commander-general of marine, (which having been mislaid, a copy cannot be here inserted, but it was, in its scope and object, similar to that which the United States consul for Talcahuano addressed to the governor of that place, a copy of which follows,) to which General Blanco made the following reply :

[No. 488.]

“COMMANDANCIA GENERAL OF MARINE,

“*Valparaiso, June 9, 1852.*

“MR. CONSUL: In your note of yesterday's date, you ask me for the copy of an order which I have never given, as it was not in my power to do so; and as respects the returning to their country of national mariners who may embark, either in Chilean or foreign vessels, and who are by the law required to be contracted before the maritime governor of the district, it is a condition required by the laws and ancient ordinances, now enforced by the general government, which will, no doubt, be able to give the explanations that may be desirable.

“In giving you this answer, I enclose you a printed copy of the contracts to which I allude.

“MANUEL BLANCO ENCALADA.

“The CONSUL of the United States in Valparaiso.”

The printed copy enclosed with the above is the same which accompanied his excellency's note of 29th of April, before mentioned.

The maritime governors and intendentes of other ports declined to furnish the information desired, until S. E. Eckel, esq., United States consul for the port of Talcahuano, succeeded in obtaining it. The following is the correspondence between him and the governor of Talcahuano:

Copy of Mr. Eckel's letter.

“CONSULATE OF THE UNITED STATES,
“*Talcahuano, Chile, August 10, 1852.*

“SIR: As bonds are exacted in this port from the masters of American vessels for the return to Chile, or satisfactory provision for Chile seamen embarking in such vessels in this port, for some time past, and as said vessels are refused clearance until such bonds be executed, which has led, on several occasions, to delays and inquiry into the origin and nature of said bond, I have the honor to request that you will be pleased to furnish me with an official copy of the bond required, and a statement of the date on which instructions to execute it were received in this port, and from whom received, as I wish to forward such information to my government.

“As this matter affects very seriously the interests of American vessels visiting Talcahuano, I feel assured you will excuse the trouble of furnishing me the information.

“I have the honor to be, &c., &c.,

“S. E. ECKEL,
“*United States Consul.*

“DON DIEGO LARENAS, *Governor, &c., &c., Talcahuano.*”

To which the governor, more accommodating than his brother officers elsewhere, promptly sent the following reply, with its enclosures:

[No. 207.]

“DEPARTMENTAL GOVERNMENT,
“*Talcahuano, August 11, 1852.*

“In answer to your note of yesterday's date, I enclose the copy that you ask in your communication, with the supreme decree relating to contracts required to be made in the shipment of Chilean sailors on board of foreign vessels, in order that you may transmit them, as you say, to your government. I also enclose two printed copies, which contain the text of the contracts for the same purpose, with which I have answered your note referred to, &c., &c.

“DIEGO LARENAS.

“*The Consul of the United States.*”

The following is a translated copy of the order enclosed with the above:

[No. 548.]

“COMMANDANCY OF MARINE,
“Valparaiso, May 6, 1851.

“The minister of marine, under date of April, communicates what follows :

“In an official communication of the 25th of last month, in reference to a reclamation made to him by six Chilean sailors belonging to the American whaler ‘Adeline Gibbs,’ the consul of this republic in Callao says to me, amongst other things, the following: ‘In order to avoid for the future the occurrence of these events, it would be proper that the captains of ports employed in the republic should not permit Chilean sailors to leave on such long voyages, or even on shorter ones, without giving to each of them a paper, even though it be a small one, signed by the captain of the vessel on board of which they may embark, which shall specify the time and conditions agreed on.

“Most of the sail and steam merchant-vessels which navigate the Pacific receive on board at least a quarter part of Chilean sailors in their crews, and it is rare that one arrives in this port without abandoning some of them; or if they, in order to better their position, wish to leave, they are obliged to remain, under pretext of the right of the flag, or some other, with no other view than to oppose or annoy them. If they had any document of their contract, it is clear that they would be free from these arbitrary annoyances, which are so prejudicial to them, and which it is so expensive to resist.”

“*To the Maritime Governor of Concepcion :*

“I send you a copy in order that, by direction of the supreme government, the suggestions of the consul, which are in conformity with what ought to be done, may receive in the district which belongs to you punctual fulfilment, not permitting Chilean mariners, for any reason whatever, to embark on board of foreign vessels without the corresponding contract made before you, of which there must be three copies—one for the captain contracting, one for the sailor contracted with, and the third must be sent to this office.

“God protect you.

“MANUEL BLANCO ENCALADA.

“CAPTAINCY OF THE PORT OF CONCEPTION.”

“TALCAHUANO, *June 2, 1851.*

“The maritime subdelgado of Tomé will take a copy of the official communication and decree preceding, and return the original to this office.

“GULLEMES.

“Received and copied—Tomé, June 11, 1851.

“CARLOS POZZI.”

In his official communication of the same date, (11th of August, 1852,) the said consul informed the undersigned that "the authorities in this port (Talcahuano) are enabled to furnish no other information upon the subject than what is here enclosed."

The undersigned, in submitting these documents to his excellency, as an apology for not responding more particularly to his position last alluded to, has no remarks to offer; he makes no reflections upon the motives of any person, but leaves these seeming contradictions to be explained by those interested in that explanation, and who are more familiar with the facts than he can be supposed to be. With regard to the observations submitted by his excellency concerning what he considers the American view of the question of impressment, to the effect that it has not been looked upon by that government as an insult to its flag, but simply as a grave and pernicious injustice, &c.—to support which supposition he appears to have overhauled the diplomatic correspondence of the United States from the foundation of the government—the undersigned has to express his regret that his excellency should have misspent so much of his valuable time, and suffered himself to be misled by some scraps of diplomatic history, when the light which Wheaton, and Marshall, and Webster have shed on the subject was shining upon the path before him. If his excellency is curious to understand what is really the American doctrine on this subject, the undersigned would recommend, as not unworthy of his perusal, the note addressed by Mr. Webster to Lord Ashburton on the 8th of August, 1842, it being a portion of the correspondence already mentioned. There his excellency will find the American doctrine so clearly and forcibly stated, that it would require no little effort or ingenuity to misunderstand or misrepresent it.

"The government of the United States," says Mr. Webster, "has reflected on the past, pondered the condition of the present, and endeavored to anticipate, so far as might be in its power, the probable future: and I am now to communicate to your lordship the result of these deliberations.

"The American government, then, is prepared to say that the practice of impressing seamen from American vessels cannot hereafter be allowed to take place. That practice is founded on principles which it does not recognise, and is invariably attended by consequences so unjust, so injurious, and of such formidable magnitude as cannot be submitted to.

"In the early disputes between the two governments on this so long contested topic, the distinguished person to whose hands were first intrusted the seals of this department, declared that the 'simplest rule will be, that the vessel being American, shall be evidence that the seamen on board are such.'

"Fifty years' experience, the utter failure of many negotiations, and a careful reconsideration now had of the whole subject, at a moment when the passions are laid, and no present interest or emergency exists to bias the judgment, have fully convinced this government that this is not only the simplest and best, but the only rule which can be adopted and observed, consistently with the rights and honor of the United States, and the security of their citizens. That rule announces,

therefore, what will hereafter be the principle maintained by their government.

"In every regularly documented American merchant vessel, the crew who navigate it will find their protection in the flag that is over them."

This is the American doctrine, and the nation that shall attempt to overthrow it, does so with fair warning and in full view of the consequences.

To the following interrogatory propounded by the undersigned, in his note of June 15th, 1851, "Will the French mariner be discharged if he was forced to enter the Chilean service, and remain in it against his will?" his excellency replies: "I will observe at the start that the embarkation of this mariner on the frigate *Chile* was an act posterior to the visit and extraction, concerning which the complaint is made that the French mariner, extracted by a jurisdictional act, ceased to belong to the North American marine, the right remaining certainly to those interested in the '*Addison*,' which they might have to a compensation for damages emanating from the proceeding, in so far as it might have been unjust, always taking into consideration the resistance of the captain to the replacement which was proposed to him. From this it would follow, that it would be the *chargé d'affaires* of France, who alone would have the right to protect the liberty of the mariner, if he had been embarked against his will on the '*Chile*.' If, on the contrary, he had shipped voluntarily on that vessel, it would be natural that he should fulfil his contract, and it is probable that the *chargé d'affaires* of France would not believe himself called on to solicit his discharge in the case."

If the undersigned comprehends the fine-spun technicality contained in the first branch of the answer of his excellency, it is, that, inasmuch as this mariner had left the whaler before he reached the *Chile*, he was, therefore, received into the naval service of *Chile* after he ceased to belong to the merchant marine of the United States. But the act of impressment complained of consists in forcing the mariner to leave the service of one vessel, and go into military service on board of the other. It is one continuous act, which had its inception in the issuance of the military order by the commander-general of marine, and its consummation in the execution of that order by his subordinate officer, the maritime-governor, when he transferred the men from one vessel to the other.

As to the other position of his excellency, that it is the *chargé d'affaires* of France *alone* who is recognised as having a right to be heard in restoring that man to his liberty, while the United States will not be listened to, it cannot be admitted, but is rejected as disrespectful to that government, and in direct contravention of the authorities before cited, and carries the doctrine of impressment to a point far beyond that for which England has ever contended, who claimed to exercise it in time of war only, and even then with respect to her *citizens* alone.

Chief Justice Marshall, while filling the office of Secretary of State of the United States, in his instructions to Mr. King, minister to England, after expressing his views on the other branch of this subject, states: "Alien seamen, not British subjects, engaged in our merchant

service, ought to be equally exempt with citizens from impressments. We have a right to an interest in their persons to the extent of the service contracted to be performed. Britain has no pretext of right to their persons or their service. To tear them, then, from our possession, is at the same time an *insult* and an *injury*. It is an act of violence for which there is no palliative."

In his despatch of the 2d July, 1851, acknowledging the copy of the note of the undersigned to his excellency of the 8th of March, Mr. Webster, amongst other things, says: "If, however, the circumstance that two (three) of the seamen were Chileans might afford some palliation for the proceeding, the fact that one of them was a Frenchman heightens its arbitrary character. If we were quietly to submit to this, we could not remonstrate if the many English sailors on board of our merchant-vessels at Havana or Rio de Janeiro were to be removed from them to gratify the caprices of Spanish or Brazilian naval officers, or to make up any alleged deficiency in the crews of vessels under their command. Such acts would embarrass commercial enterprise, and engender a feeling in this country at variance with that good understanding with foreign governments which we wish to preserve, so far as the most patient moderation and forbearance, compatible with a just regard for our interests, will allow." In another part of the same despatch, Mr. Webster remarks: "The department, however, was not aware that Chile claimed the right (of impressment) even in time of war. The sudden use of the power, even in her own waters, at a period of profound peace, and without justifiable necessity, would be an act at variance with the comity of nations, for which her government may justly be held responsible."

These and other portions of Mr. Webster's said despatch were communicated to his excellency by the undersigned, with his note of the 16th of March, 1852. In a previous part of his excellency's note he says: "1st. Was the proceeding of removing the French mariner unjust? 2d. Supposing it to have been unjust, was not a most liberal reparation spontaneously offered to the captain by the authorities of Valparaiso, proposing to replace all the mariners taken away? Supposing that the proceeding of the maritime-governor was unjust, could a more effective reparation have been adopted than the immediate replacement of the mariners, and the restitution of those extracted, fifteen days afterwards—that is to say, as soon as it was possible?"

To which the undersigned would reply: 1st. That the government of Chile is estopped from availing itself of the offer and implied concessions of the local authorities, because it repudiated them, and denied the facts upon which alone they could, with propriety, have been made, and still does disavow and repudiate them; defending and justifying the maritime governor.

2d. That there were other and higher considerations involved, than the loss in dollars and cents to those interested in the "Adison." The flag of the United States had been insulted; the national honor was touched; and, lastly, the French mariner had the same right to the protection of that flag as if he were an American citizen. The offer to return him to the whaler affords conclusive

evidence that he had been wrongfully taken away, and that he was wrongfully detained.

And yet, although his excellency seems to think it right in the local authorities to make a tender of him to the captain of the *Addison*, as if he were a bale of goods; yet he refuses, in the name of his government, to restore him to his liberty, when demanded by the government of the United States, in the performance of a high and sacred duty: which obliges it to see that "in every regularly documented American vessel, the crew who navigate it will find their protection in the flag which is over them."

Having made these observations, the undersigned would willingly have left the case to be settled by the two governments, without further remark; but, as his excellency has seen proper to introduce certain topics, not altogether germane to the subject, * * * * *

It is only necessary that the two countries should execute their own laws in a spirit of friendship and justice, and to see that there shall be, on the part of local magistrates and officers, no officious interference with persons or things on board of the vessels of the respective parties, while in the jurisdiction of the other, further than may be indispensable to enforce the observance of the municipal laws of the country, and the proper regulation of their harbors and waters. This is the practical remedy adopted by England towards the United States, and which has proved to be efficacious in questions of acknowledged difficulty.

If there exists, at the present time, no treaty of friendship and commerce between the United States and Chile, the undersigned does not think the consequences can, in any manner, be charged to the United States. Chile, by her own act, put an end to the late treaty.

* * * * *

There are in his excellency's note certain reflections of a personal character, which the undersigned would gladly have been spared the necessity of noticing, as he considers all such reflections out of place in diplomatic correspondence, and under no provocation will he permit himself to transcend the legitimate limits of self-defence.

His excellency refers, in a manner peculiarly pointed and significant, to an alleged omission or suppression of a paragraph in the note of Mr. Webster to Lord Ashburton, a portion of which the undersigned had quoted in his note of March 8, 1851.

The paragraph in question was of no particular importance; the undersigned did not profess to set forth the whole of Mr. Webster's note, but only such portions thereof as he considered pertinent to the question, and referred him to that state paper, of which it was impossible to suppose his excellency altogether ignorant, as it is accessible to every intelligent person. And it really appeared to the undersigned as indicating an eagerness to find fault, when his excellency made a point of this trivial matter. However, immediately on the receipt of his excellency's note, the undersigned referred to the original draught of his note, and also to the book in which it was already recorded, and found there was no omission such as that complained of, but, on the contrary, the entire paragraph in question was correctly quoted; to which, on a recent visit of Señor Don Andres Bello to the

legation, the undersigned called his attention ; and shortly thereafter he received a communication from Mr. Bello, informing him that, upon a careful examination of the note in the department of foreign relations, he found that there was no omission of the said paragraph, and generously, and no doubt truly, took upon himself the mistake which had occurred in its translation. This communication was made, as he states, with the knowledge and approbation of the minister of foreign relations. The undersigned has to express his regret, on his excellency's account, that he did not do himself the justice to withdraw the imputation as soon as he found it was groundless.

Towards the conclusion of his note, his excellency arraigns the undersigned, in the following strain, for having ventured to differ with him as to the conduct and credibility of the maritime governor, the wrong-doer and main witness on the other side of the question. He says : "The adopting as a fact a supposition which is in contradiction of the authorities of Valparaiso, and which the undersigned" (his excellency) "had contradicted, does not manifest a very conciliatory spirit. It is only by viewing the facts under this mistaken aspect that it has been able to elevate an act of ordinary local jurisdiction to the rank of an offence against the North American flag, to convert into an injury to the United States a proceeding which, at the most, could only be sustained as a damage to the interests of a North American. It is only under the same mistaken idea that your excellency could have made allusions which the undersigned will abstain from characterizing, but which are certainly not very well calculated to strengthen the harmony and friendly relations of the United States and this republic, and which, I am sorry to say to your excellency, tend to draw diplomatic discussions from their proper grounds."

In reply to which, the undersigned would beg leave to remind his excellency that the conduct, the character, and credibility of the maritime governor was the material issue in the case, concerning which it was his right and his duty to speak. The undersigned make no pretensions to infallibility, and may unconsciously have done injustice to that officer. If so, he has been misled by the evidence of gentlemen entitled to full credit, and by no one more than by Governor Blanco himself. But the real cause of complaint seems to be, that his excellency had previously expressed a different opinion, and, therefore, it was offensive for the undersigned to dissent from that opinion. Such a principle cannot be admitted, as it is incompatible with that independence which belongs to the diplomatic character.

With regard to the sweeping charges with which his excellency concludes this portion of his note, the undersigned has only to say that those charges are of a character too vague and indefinite to admit of any particular explanation or defence ; but he is conscious of having never intended giving any just cause of complaint in this respect, nor does he think there can be found a passage in any of his prior official communications which, when properly understood and fairly interpreted, will bear such a construction. For the rest, the undersigned has the satisfaction of knowing that Mr. Webster, the late distinguished Secretary of State of the United States, approved not only

the *doctrines*, but the *general tone* of the principal note he addressed to his excellency on the subject.

So far from having sought pretexts upon which to interrupt the good understanding of the two countries, the undersigned supposed that he had gone to the contrary extreme; as an evidence of which, he would refer to a note of his excellency, irrelevant to this case, but pertinent to the question under consideration, which has been presented by his excellency. * * * * *

But the undersigned will not transcend the limits of self-defence which he has prescribed for his own government; he relies, for a full and complete refutation of these unfounded imputations, on the records with which he confronts his excellency.

The undersigned avails himself of this occasion to reproduce to his excellency, the minister of state and foreign relations of Chile, assurances of his high consideration.

BALIE PEYTON.

His Excellency SEÑOR DON ANTONIO VARAS,
Minister of State and Foreign Relations, Chile.

[Translation.]

SANTIAGO, *July 1, 1853.*

SIR: I received yesterday a note from your excellency, bearing date the 1st of May, of the present year, and relating to the claim preferred about the withdrawal of some seamen from on board of the American barque "Addison."

The length of the contents of that communication prevents me from replying to it at once. I confine myself, therefore, simply to an acknowledgment of its receipt.

I have the honor to offer to the honorable Mr. Peyton assurances of the distinguished consideration with which I am his excellency's most obedient servant,

ANTONIO VARAS.

To the ENVOY EXTRAORDINARY AND MINISTER

PLENIPOTENTIARY of the United States of America.

