MESSAGE

OF

THE PRESIDENT OF THE UNITED STATES,

COMMUNICATING

A copy of a letter of the 20th May last from the United States commissioner in China, and of the decree and regulations which accompanied it.

DECEMBER 1, 61856.—Read, ordered to lie on nhe table and be printed.

To the Senate and House of Representatives:

I transmit a copy of a letter of the 20th of May last, from the commissioner of the United States in China, and of the decree and regulations which accompanied it, for such revision thereof as Congress may deem expedient, pursuant to the sixth section of the act approved August 11, 1848.

FRANKLIN PIERCE.

WASHINGTON, *December* 12, 1856.

Mr. Parker to the President.

LEGATION OF THE UNITED STATES,
Macao, May 20, 1856.

SIR: Conformably to the sixth section of the act of Congress approved August 11, 1848, I have the honor to transmit to the President the enclosed decree and regulations of the 8th March, issued and published by me under the provisions of the said act of Congress, "with the opinions of my advisers, as drawn up by them severally, to be laid before Congress for revision."

With sentiments of distinguished consideration and respect, I have the honor to remain, sir, your excellency's most obedient servant,

PETER PARKER,
Commissioner of the United States to China.

His Excellency FRANKLIN PIERCE,
President of the United States of America.

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

CONSULATE OF THE UNITED STATES,
Amoy, April 3, 1856.

SIR: I have the honor to acknowledge the receipt this day of your communication of the 12th March, enclosing, in printed form, copies of "decrees and regulations for *judicial jurisdiction* by *acting consuls or vice-consuls of the United States of America in China.*"

I have perused your communication and its enclosures with care; and while concurring with you in the belief that much inconvenience and detriment to public interest have been occasioned in the repeated absence of the United States consul from one or the other of the five ports in China, "for want of duly constituted authority to exercise judicial powers;" and while agreeing with you fully as to the importance of a suitable remedy being provided, I nevertheless find it necessary, I regret to say, to dissent from the position assumed in the decrees and regulations presented for "my approval or otherwise."

On pages 109 and 110 of the Revised General Instructions to Consuls and Commercial Agents of the United States of 1855, which have been sent out by the State Department for our guidance, you will find the following decisive opinion and instruction on the point before us.

"274. In case a consul in China should find it necessary, for urgent reasons, to leave temporarily his post, with the consent of the President, he is authorized to appoint, with the approval of this department, some suitable person to act as vice-consul, to whom he may delegate his *consular* functions.

"275. It is *expressly to be understood, that such vice-consul is not authorized to exercise judicial functions* under the act of 11th August, 1848. To say nothing of the anomaly of a public functionary delegating his judicial authority to another, the act above referred to requires the consul to be duly appointed before he can exercise judicial functions under it; and to be 'duly appointed,' *he must first be nominated by the President*, and afterwards confirmed by the Senate, except when made to fill a vacancy occurring during a recess of that body."

This language seems plain and conclusive, and without some paramount authority being shown for investing vice-consuls with *judicial* authority, I find myself impelled to withhold my approval of the decrees and regulations referred to.

Regretting the necessity which impels me to withhold my sanction from a measure so obviously proper in itself, and so evidently demanded by the public interest,

I have the honor to subscribe myself, very respectfully, yours,

T. HART HYATT,
United States Consul, Amoy.

Hon. PETER PARKER,
United States Commissioner, &c., Canton.

UNITED STATES LEGATION,
Macao, April 16, 1856.

SIR: I am in receipt of your communication of the 3d instant, in which you are conscientiously compelled, for reasons assigned, to withhold your assent to the decree and regulations of the 12th March. It is apparent, from the tenor of your despatch, that you could not have seen the opinion of the Attorney General of the 19th September, 1855, given subsequently to the date of the "Revised General Instructions to Consuls," from which you quote.

I will remark, in passing, that the objections you present are so many arguments in favor of legislation to supply the defect, which legislative authority is expressly conferred on the United States commissioner by sections four and five of the act of August 11, 1848, and which it is the design of the decree to supply in a simple and *safely* guarded manner, restricting the judicial authority of acting consuls and vice-consuls to minor cases, at the same time paving the way to the appellative jurisdiction of the commissioner.

I now append you an extract from the Attorney General's opinion upon the subject, that, if you judge proper, after examining it, you may withdraw your objections in view of these opinions, and return me the duplicate copy of the decree you have, with your assent; or, on the contrary, to inform me that you still adhere to your expressed dissent.

Very respectfully, your obedient servant,

PETER PARKER.

THOMAS HART HYATT, Esq.,
United States Consul, Amoy.

N. B. For extract quoted *vide* Attorney General's Opinions, September 24, 1855, pp. 22, 23.

CONSULATE OF THE UNITED STATES,
Amoy, May 2, 1856.

SIR: I duly received your note of the 16th April, embodying extracts from the opinion of the Attorney General of the United States, of 19th September, 1855, on the subject of consular judicial powers in China; by which it appears that the decision of the present Secretary of State, and of a former head of the State Department, (Mr. Webster,) that vice-consuls could not legally exercise judicial powers, is reversed; and that a "lawfully appointed" vice-consul may now exercise judicial functions in China. This being the case, the objections on that head, expressed by me on the 3d ultimo, in returning your decree and regulations of the 8th March, seem to be mainly obviated.

There is still doubt, however, in my mind, as to an acting or vice-consul being "duly appointed," so as to constitute him legally a judge of the consular court, unless his appointment be confirmed by the President or Secretary of State. In the extracts which you quote, the Attorney General says, "the vice-consul is, in law, appointed by

the Secretary of State, or the President; just as inspectors of customs are in law appointed by the Secretary of the Treasury, or the President; and, again, that "whether nominated in the first instances by the commissioner, or by the consul, the vice-consul, *when approved* by the *Secretary of State,* is to be deemed a person invested by the United States with, and exercising the consular authority." And the clause which follows, that "the approval may, perhaps, be considered as covering the action of the vice-consul, under his existing appointment by the commissioner," seems to me but very vaguely and faintly, if at all, to imply the right of an acting or vice-consul to exercise judicial authority on the mere appointment of the commissioner.

But if the law, or the decision of the Attorney General, *does* give that right, can any corroborative ordinance or decree of the commissioner be necessary, or will it enhance the validity of that authority? If the *law* does *not* authorize such authority, can any decree of the commissioner create such a power, or make such appointment legal or effective?

These are queries that have suggested themselves to my mind on reviewing the subject; but, as they are questions that must be finally settled by our home government, and as I can anticipate no evil as likely to grow out of a temporary trial of the experiment, until the decision of government shall be made known, I withdraw the objections heretofore made, and give my assent to the decrees and regulations, with these explanatory suggestions and reservations.

Accordingly I return to you the duplicate copy of the decree, hereto annexed, with my assent subscribed thereto, requesting that you will send me another copy to put on file in this consulate.

Respectfully, yours,

T. HART HYATT,
United States Consul, Amoy.

Hon. PETER PARKER,
Commissioner of the U. S. in China, Macao.

[No. 10.] UNITED STATES CONSULATE,
Foo Chow, May 3, 1856.

SIR: I have the honor to acknowledge the receipt of your despatch, dated March 12, 1856, and also two copies of the decrees and regulations for judicial jurisdiction for acting consuls and vice-consuls, dated March 8, 1856; one of the same is herewith returned, with my assent thereto.

I should have signed and returned the same before but for the doubts I have entertained, occasioned by consular instructions bearing upon the same from the State Department. But being perfectly satisfied of the absolute necessity of the decrees, and confident that much good will result therefrom, I have waived all doubts upon the matter, believing that if I have committed an error the circumstances will excuse, if not justify, the same.

Everything at this port remains about the same as when I last

wrote you. We have had, for the last month, various reports of the approach of the rebels to the borders of this province. I have never regarded these rumors as worthy of much credit; the authorities, however, have ordered some three or four thousand soldiers from other places to Foo Chow, and many of them have already arrived.

The reports from the tea districts are to the effect that a much larger amount of tea will be sent here this season than last, and competent judges estimate the shipments from this port for 1856 at fifty millions of pounds.

Your despatch of April 23 is at hand. I have not yet received the one alluded to of April 16. I shall with much pleasure adopt your suggestions, and be guided by your instructions.

I have the honor to remain, with great respect, your obedient servant,

CALEB JONES,
United States consul.

His Excellency PETER PARKER,
United States Commissioner, Canton, China.

[Private.]

UNITED STATES CONSULATE,
Foo Chow, April 8, 1856.

MY DEAR SIR: I have the honor to acknowledge the receipt of your communication of the 12th of March, and with it two copies of "Decrees and Regulations," dated Canton, 8th of March, 1856. I fully concur with you in relation to the *necessity* of the decrees, and I am fully aware of the great inconvenience and detriment to the public interest in consequence of the absence from the ports of China of persons qualified to exercise judicial powers. I agree most fully with you that the opinion of the Attorney General of the United States of 19th September, 1855, would seem to authorize that vice-consuls appointed by you, as well as those appointed by consuls and confirmed by the Secretary of State, should exercise judicial functions, and I would now at once approve, and promptly return the decrees you have sent for my signature but for the circular to consuls and commercial agents of the United States, dated Department of State, June 22, 1855. In these instructions the seventeenth chapter is devoted entirely to the duties of United States consuls in China. Sections 274 and 275, on pages 109 and 110, contain these words: "In case a consul in China should find it necessary, for urgent reasons, to leave temporarily his post, with the consent of the President, he is authorized to appoint, with the approval of this department, some suitable person to act as vice-consul, to whom he may delegate his consular functions." It is expressly to be understood that such vice-consul is not authorized to exercise judicial functions by the act of 11th of August, 1848. To say nothing of the anomaly of a public functionary delegating his judicial authority to another, the act above referred to requires the consul to be duly appointed before he can exercise judicial functions under it, and, to be duly appointed, he must first be nomi-

nated by the President and afterwards confirmed by the Senate, except when made to fill a vacancy occurring during a recess of that body.

Believe me, dear sir, that I raise these objections to the decrees (which I am personally and decidedly in favor of) with great diffidence, and solely with the object to obtain from you reasons which would justify me in officially approving of what my best judgment tells me is most desirable and necessary for the interests of our countrymen in this empire, but at the same time what appears to me to be positively forbidden by the instructions heretofore referred to.

I have written you this as a private letter, for the reason that I desire to approve of the decrees which you have issued, and only wait to have you enlighten me fully in relation to the difficulties I have suggested.

With the kindest regards, believe me, dear sir, very truly yours,

CALEB JONES.

His Excellency PETER PARKER,
United States Commissioner to China.

[Private.]

UNITED STATES LEGATION,
Macao, April 23, 1856.

MY DEAR SIR: Your private letter of the 8th instant has this moment come to hand, and I hasten to reply, as I am most desirous the subject to which the same relates should be early disposed of. I thank you for the frankness and the spirit in which your letter is dictated. The objections you feel to approving, at once, the decree of the 8th of March are the same as have presented themselves to the United States consul at Amoy; but, as I have had occasion to remark to him, they are so many strong arguments in favor of the decree. He had not, however, seen Mr. Cushing's opinion. I think your difficulties found in the general instructions to consuls will be dissipated if you duly consider that the opinion of the Attorney General had [having] reference to them is of a subsequent date, and specifically combats the idea of the delegation of judicial authority.—*Vide* pp. 22 and 23 of Attorney General's opinion of September 29, 1855.

I had full and free conversation with both Governor Marcy and General Cushing upon this subject, and, therefore, feel more confident in the correctness of my decree.

In reference to his former decisions respecting the jurisdiction of vice-consuls, the Secretary of State remarked that he had followed what is called the "Rules of the Department," to be guided by precedent, and finding that the views he had adopted had been entertained by Mr. Webster, he did not further examine the question, and it was at this point the opinion of Mr. Cushing was given.

I conceive that I have legitimately used the *legislative authority* conferred on the commissioner by the fourth and fifth sections of the act of 1848 to supply defects, which the decree does in a simple and *safely* guarded manner, restricting judicial authority on the part of acting and vice-consuls to minor cases, with a *special* view to pave the way to the appellative power of the commissioner.

The decree has been approved by the United States consul at Canton, and I shall be gratified if, after these explanations, it shall meet with yours. If not, you have simply to return the decree, with your dissent and reasons for it on the blank leaf of the decree.

Reciprocating your kind sentiments, and with best regards to Mrs. Jones, believe me yours, very sincerely,

PETER PARKER.

CALEB JONES, Esq.,
United States Consul, Foo Chow.

[No. 10.] UNITED STATES CONSULATE,
Foo Chow, May 3, 1856.

SIR: I have the honor to acknowledge the receipt of your despatch, dated 12th March, 1856, and also two copies of the decrees and regulations for judicial jurisdiction for acting consuls and vice-consuls, dated 8th March, 1856; one of the same is herewith returned, with my assent thereto. I should have signed and returned the same before but for the doubts I have entertained, occasioned by consular instructions bearing upon the same from the State Department. But, being perfectly satisfied of the absolute necessity of the decrees, and confident that much good will result therefrom, I have waived all doubts upon the matter, believing that if I have committed an error the circumstances will excuse, if not justify, the same. * *

I have the honor to remain, with great respect, your obedient servant,

CALEB JONES,
United States Consul.

His Excellency PETER PARKER,
United States Commissioner, Canton.

Decrees and regulations for judicial jurisdiction by acting consuls or vice-consuls in the consular courts of the United States of America in China.

CANTON, *March* 8, 1856.

In pursuance of the fourth section of the act of Congress approved 11th August, 1848, entitled "An act to carry into effect certain provisions of the treaties between the United States and China and the Ottoman Porte," giving certain judicial powers to ministers and consuls of the United States in those countries: I, Peter Parker, commissioner of the United States of America to the empire of China, do hereby decree the following rules and regulations, which shall have the force of law in the consular courts of the United States of America in China.

1st. That acting consuls and vice-consuls appointed by the commissioner in China, or vice-consuls appointed by consuls and confirmed by the commissioner, or the appointment as vice-consul being

confirmed by the Secretary of State, such acting consul or vice-consul shall be considered as "*invested by the United States* with, and exercising, the consular authority, in any of the five ports in China named in the treaty," and as such qualified to exercise judicial authority.

2d. Any acting consul or vice-consul appointed and confirmed, as above provided, shall exercise judicial authority in the same manner as a full consul, except in the point of law and regulations concerning appeals to the commissioner.

3d. In all cases for the trial of offences by an acting consul or vice-consul, when the fine imposed shall exceed five hundred dollars, or the term of imprisonment shall exceed one year, the decision of the acting consul or vice-consul, whether sitting with or without assessors—and if with assessors, although the acting consul or vice-consul and his associates concur in opinion, the sentence shall not be final until, if either party desires it, the decision is referred to the commissioner and confirmed by him, or otherwise disposed of, as provided by the 13th section of said act of August 11, 1848, viz: upon the evidence that comes up with it, the commissioner shall himself decide finally, or hear the parties further, if he thinks justice will be promoted thereby; or he may also prescribe the rules upon which a new trial may be granted by the acting consul or vice-consul, or by himself, with or without assessors, if asked for upon justifiable grounds.

4th. All cases which come under the 15th section of the act of August 11, 1848, aforesaid, occurring at a port where the consular office is held by an acting consul or vice-consul, shall be referred for trial, with all the evidence, to the nearest United States consul of the five ports.

PETER PARKER,
Commissioner of the United States in China.

Approved March 11, 1856.

OLIVER H. PERRY,
United States Consul for the port of Canton.

Assented to at Amoy, May 2, 1856.

T. HART HYATT,
United States Consul, Amoy.

Assented to May 3, 1856.

CALEB JONES,
United States Consul, Foo Chow