APPENDIX.

NOTE I.

On Charitable Bequests.

(By Mr. Justice Story.)

Very few cases upon the subject of charitable donations have originated in the United States; in some of which, however, it is highly probable, the English doctrines on this subject may be of limited, and perhaps, even of general application. Where this is not the case, they may gratify professional curiosity, and afford materials for illustration in analogous branches of the law, as there is hardly any portion of the science in which more ingenious reasoning and indefatigable diligence have been employed. The object of the following sketch is to give a connected view of some of the principal features of the system.

It is highly probable, that the rudiments of the law of charities were derived from the civil law. One of the earliest fruits of the emperor Constantine's real or pretended zeal for Christianity was a permission to his subjects to bequeath their property to the church. (*a*) This permission was soon abused to so great a degree, as to induce Valentinian to enact a mortmain law, by which it was restrained. (*b*) But this restraint was gradually relaxed, and in the time of Justinian, it became fixed, as a maxim of Roman jurisprudence, that legacies to pious uses, which included all legacies destined for works of charity, whether they related to spiritual or temporal concerns, were of *peculiar favor, and to be deemed privileged testaments. (*c*) The construction of [*4
testaments of this nature was most liberal; and the legacies were never permitted to be lost, either by the uncertainty or failure of the persons or objects for which they were destined. Hence, if a legacy was given to the church, or to the poor generally, without any description of what church or what poor, the law sustained it, by giving it, in the first case, to the parish church of the place where the testator lived; and in the latter case, to the hospital of the same place; and if there was none, then to the poor of the same parish. (*d*) And in all cases where the objects were indefinite, the legacy was carried into effect under the direction of the judge having cognisance of the subject. (*e*) So, if a legacy were given for a definite object, which either was previously accomplished, or which failed, it was, nevertheless, valid, and applied under judicial direction to some other object. (*g*)

The high authority of the Roman law, coinciding with the religious notions of the times, could hardly fail to introduce the principles of pious legacies into the common

(*a*) Cod. Theodos. L. 16, t. 2, leg. 4.

(*b*) Ibid. leg. 20.

(*c*) 2 Domat, Loix Civiles, L. 4, t. 2, § 6, l. 1, 2, 7, p. 161, 163; Ferriere, Dict. h. t.; Swinburne, p. 1, § 13, p. 103.

(*d*) 2 Domat, L. 4, t. 2, § 6, l. 4, p. 162; Ferriere, Dict. h. t.

(*e*) 2 Domat, L. 4, t. 2, § 6, l. 5, p. 152; Swinburne, p. 1, § 16, p. 104.

(*g*) 2 Domat, L. 4, t. 2, § 6, l. 6, p. 162, 163.

law of England; and the zeal and learning of the ecclesiastical tribunals must have been constantly exercised to enlarge their operation. Lord THURLOW(*a*) was clearly of opinion, that the doctrine of charities grew up from the civil law; and Lord ELDON,(*b*) in assenting to that opinion, has judiciously remarked, that, as at an early period, the Ordinary had power to apply a portion of every man's personal estate to charity, when, afterwards, the statute compelled a distribution, it is not impossible, that the same favor should have been extended to charity, in wills which, by their own force, purported to authorize such a distribution. Be the origin, however, what it may, it cannot be

*5] *denied, that many of the privileges attached to pious legacies have been for ages incorporated into the English law. Indeed, in former times, the construction of charitable bequests was pushed to a most alarming extravagance; and though it has been in a great measure checked in later and more enlightened times, there are still some anomalies in the law of this subject, which are hardly reconcilable with any sound principles of judicial interpretation, or the proper exercise of judicial authority.

The history of the law of charitable bequests, previous to the statute of 43 Elizabeth, c. 4. which is emphatically called the statute of Charitable Uses, is extremely obscure.(*c*) Few traces remain of the exercise of jurisdiction over charities, in any shape, by any courts, previous to that period. Of the jurisdiction of chancery, nothing is ascertained with precision; and the few cases to be found at law turned mainly on the question whether the uses were charitable, or whether they were superstitious, within the statutes against superstitious uses. One of the earliest cases is Porter's Case, 1 Co. 22 *b*, in 34 & 35 Eliz., already alluded to in the decision of the supreme court in the text (*ante*, p. 33), but there the parties made out their case at law, upon general principles, without reference to any peculiar rules of construction as to charities; and Lord ELDON seems to think, that this was the usual course, prior to the time of Lord ELLESMERE.(*d*)

The statute of Elizabeth is now considered as the principal source of the law of charities, and has given rise to various questions. It is to this statute that the very extensive jurisdiction at present exercised by the court of chancery over subjects of this nature is generally, if not exclusively, to be referred.

*6] The statute, in its preamble,(*e*) enumerates certain uses which *it deems charitable. These are gifts, devises, &c., for the relief of aged, impotent and poor people; for maintenance of sick and maimed soldiers and mariners; for schools of learning, free schools and scholars of universities; for repairs of bridges, ports, havens, causeways, *churches*, sea-banks, and highways; for education and preferment of orphans; for or towards the relief, stock or maintenance for houses of correction; for marriages of poor maids; for supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; for relief or redemption of prisoners or captives; and for aid or ease of any poor inhabitants, concerning payments of fifteenths, setting out of soldiers, and other taxes. These are all the classes of uses which the statute reaches.

Since the passage of the staute, it has become a general rule that no uses are to be considered as charitable, and entitled, as such, to the protection of the law, except such as fall within the words or obvious intent of the statute. Sir WILLIAM GRANT has observed, that the word "charity," in its widest extent, denotes all good affections men ought to bear towards each other; in its most restricted and common sense, relief of the poor. In neither of these senses, is it employed in the court of chancery. There, its signification is chiefly derived from the statute of Elizabeth.(*g*) And, therefore, where a testatrix bequeathed her personal estate to the Bishop of Durham, &c., upon

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(*a*) White *v.* White, 2 Bro. C. C. 12.

(*b*) Moggridge *v.* Thackwell, 7 Ves. 36, 69; Mills *v.* Farmer, 1 Merivale 55, 94, 95.

(*c*) There was, in fact, a statute passsed respecting charitable uses, in 39 Eliz., c. 9; but it was repealed by the statute 43 Eliz. See Com. Dig., Charitable Uses, N, 14.

(*d*) Attorney-General *v.* Boyer, 3 Ves. 714, 726.

(*e*) See the statute at large, 2 Inst. 707; Bridgman's Duke on Charit. Uses, c. 1.

(*g*) Morice *v.* Bishop of Durham, 9 Ves. 399.

trust, to pay her debts and legacies, &c., and to dispose of the ultimate residue to such objects of benevolence and liberality as the Bishop of Durham, in his own discretion, shall most approve of; and she appointed the Bishop her sole executor: upon a bill brought by the next of kin to establish the will and all the legacies, except the residuary bequest, and to declare that void, and a resulting trust for the next of kin, it was held, first, by the master of the rolls, and afterwards on appeal by the lord chancellor, that the residuary bequest was void, and that the property was a resulting trust for the next of kin, upon the ground, that objects of benevolence and liberality were not necessarily such as were within the statute of Elizabeth, and, *therefore, were [*7
objects too indefinite to be executed by the court; and if so, then the trust was void; for there can be no valid trust, over which the court of chancery will not assme a control. The master of the rolls said, those purposes are considered as charitable which the statute enumerates, or which, by analogies, are deemed within its spirit or intendment; and to some such purpose every bequest to charity generally shall be applied. But it is clear that liberality and benevolence can find numberless objects not included in the statute, in the largest construction of it. The use of the word "charitable," seems to have been purposely avoided in this will. The question is not whether the bishop may not apply the residue upon purposes strictly charitable, but whether he is bound so to apply it.(*a*)

The statute appoints a mode of inquiring into, and enforcing, all charitable uses, bequests, &c., by a commission issuing out of chancery; and the commissioners, upon such inquiry, are authorized to set down such orders, judgments and decrees, as that the lands, &c., may be faithfully employed for the charitable uses to which they were appointed; which orders, judgments and decrees are to stand good, until undone and altered by the court of chancery, upon due complaint of the party grieved. The statute, then, after enumerating certain exceptions to its operation, gives authority to the court of chancery to take order for the due execution of the orders, judgments and decrees of the commissioners, returned into chancery, and upon any complaint in the premises, and the hearing thereof, to "annul, diminish, alter or enlarge the said orders, judgments and decrees, &c., as shall be thought to stand with equity and good conscience, &c."

Shortly after the statute passed, it became a question, whether the court of chancery could grant relief by original bill, in cases within the statute, or whether the remedy was confined to the process by commission. That doubt remained until the reign of Charles II., when the question was finally settled in *favor of the jurisdiction [*8
by original bill.(*b*) It is not quite certain, upon what grounds the court arrived at this conclusion. The probability is, that in cases of charitable uses of a definite nature, where the trustees were alive, and the objects were certain, the court exercised a general jurisdiction by original bill, upon the same grounds as other bills; for definite trusts are maintained upon its ordinary jurisdiction. And as the court might, upon all commissions, alter, amend and enlarge the decrees of the commissioners, in all cases of charities within the statute, whether definite or indefinite, the proceeding in both cases became mixed in practice, and was inveterately established, before its correctness was very extensively questioned. And it was, in reality, more convenient for all parties, that the court should do that, in the first instance, which it certainly could do, after the return of the commission, upon complaint, so that public convenience and private interest might produce a general acquiescence in a course, which settled the law of the case without any circuity, until it became too late successfully to combat its regularity.(*c*)

(*a*) Morice *v.* Bushop of Durham, 9 Ves. 399. s. c. 10 Id. 522.

(*b*) Attorney-General *v.* Newman, 1 Ch. Cas. 157; s. c. 1 Lev. 284; West *v.* Knight, 1 Ch. Cas. 134; Anon., Ibid. 267; Parish of St. Dunstan *v.* Beauchamp, Ibid. 193; 2 Fonbl. Eq. b. 3, p. 2, c. 1, § 1.

(*c*) See Attorney-General *v.* Dixie, 13 Ves. 519; Kirkby Ravensworth Hospital, 15 Ibid. 305; Green *v.* Rutherforth, 1 Ibid. 362; Attorney-General *v.* Earl of Clarendon, 17 Ibid. 491, 499; 2 Fonbl. Eq. b. 3, p. 2, c. 1, § 1, note a; Cooper's Eq. Pl. 292; Bailiffs, &c., of Burford *v.* Lenthall, 2 Atk. 550.

Charitable Bequests.

Be this as it may, it is very certain, that chancery will now relieve by original bill, or information, upon gifts, bequests, &c., within the statute of Elizabeth; and informations by the attorney-general to settle, establish or direct charitable donations, are very common in practice.(*a*) But where the gift is not a charity within the statute, no information lies in the name of the attorney-general to enforce it.(*b*) And if an information be brought in the name of the attorney-general, and it appears to be such a charity as the court ought to support, though the information be mistaken in the title or prayer of relief, yet the bill will not be dismissed, but the court will support and
*9] establish *the charity in such manner as by law it may.(*c*) But the jurisdiction of chancery over charities does not exist, where there are local visitors appointed; for it then becongs to them and their heirs to visit and control the charity.(*d*)

As to what charities are within the statute, they are enumerated with great particularity in Duke on Charitable Uses, and Comyn's Digest, tit. Charitable Uses, N, 1. It is clear, that no superstitious uses are within its purview, such as gifts of money for the finding or maintenance of a stipendiary priest, or for the maintenance of an anniversary or *obiit*, or of any light or lamp in any church or chapel, or for prayers for the dead, or to such purposes as the superior of a convent or her successor may judge expedient.(*e*) But there are certain uses which, though not within the letter, are yet deemed charitable, within the equity of the statute; such as money given to maintain a preaching minister; to maintain a school-master in a parish; for the setting up an hospital for the relief of poor people; for the building of a sessions-house for a city or county; the making a new or repairing an old pulpit in a church, or the buying of a pulpit cushion or pulpit cloth; or the setting up of new bells where none are, or amending of them where they are out of order.(*f*)

And charities are so highly favored in the law that they have always been more liberally construed than the law will allow in gifts to individuals. In the first place, the same words in a will, applied to individuals, may require a very different construction when applied to the case of a charity. If a testator gives his property to such person as he shall hereafter name to be his executor, and afterwards appoint no exec-
*10] utor; or if, having appointed an executor, the latter dies in the lifetime *of the testator, and no other person is appointed in his stead, in either of these cases, as to individuals, the testator must be held intestate, and his next of kin will take the estate. But to give effect to a bequest in favor of charity, chancery will, in both instances, supply the place of an executor, and carry into effect that which in the case of individuals must have failed altogether.(*g*) Again, in the case of an individual, if an estate be devised to such person as the executor shall name, and no executor is appointed, or, one being appointed, dies in the testator's lifetime, and no one is appointed in his place, the bequest amounts to nothing. Yet such bequest to charity would be good, and the court of chancery would, in such case, assume the office of executor.(*h*) So, if a legacy be given to trustees, to distribute in charity, and they die in the testator's lifetime, although the legacy is lapsed at law (and if they had taken to their own use, it would have been gone for ever), yet it will be enforced in equity.(*i*) Again,

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(*a*) Com. Dig. Chan. 2, N, 1. The proceeding by commission appears to have almost fallen practically into disuse. Ed. Rev. No. lxii. p. 383.

(*b*) Attorney-General *v.* Hever, 2 Vern. 382.

(*c*) Attorney-General *v.* Smart, 1 Ves. 72; Attorney-General *v.* Jeanes, 1 Atk. 355; Attorney-General *v.* Breton, 2 Ves. 425; Attorney-General *v.* Middleton, Ibid. 327; Attorney-General *v.* Parker, 1 Ibid. 43; s. c. 2 Atk. 576; Attorney-General *v.* Whittley, 11 Ves. 241, 247.

(*d*) Attorney-General *v.* Price, 3 Atk. 108; Attorney-General *v.* Governors of Harrow School, 2 Ves. 552.

(*e*) Duke's Char. Uses, 105; Bridg. Duke 349, 466; Adams *v.* Lambert, 4 Co. 104; Smart *v.* Spurrier, 6 Ves. jr. 567.

(*f*) Duke 105, 113; Bridg. Duke 354; Com. Dig. Char. Uses, N, 1.

(*g*) Mills *v.* Farmer, 1 Merivale 55, 96; Moggridge *v.* Thackwell, 7 Ves. 36.

(*h*) Mills *v.* Farmer, 1 Merivale 55, 94; Moggridge *v.* Thackwell, 7 Ves. 36; Attorney-General *v.* Jackson, 11 Ibid. 365, 367.

(*i*) Attorney-General *v.* Hickman, 2 Eq. Cas.

although in carrying into execution a bequest to an individual, the mode in which the legacy is to take effect must be of the substance of the legacy; yet, where the legacy is to charity, the court will consider charity as the substance; and in such cases, and in such cases only, if the mode pointed out fail, it will provide another mode by which the charity may take, but by which no other than charitable legatees can take.(*a*) A still stronger case is, that if the testator has expressed an absolute intention to give a legacy to charitable purposes, but has left uncertain, or to some future act, the mode by which it is to be carried into effect, there, the court of chancery, if no mode is pointed out, will of itself supply the defect and enforce the charity.(*b*) *Therefore, it has been held, that if a man devise a sum of money to such charitable uses as he shall direct by a codicil annexed to his will, or by a note in writing, and afterwards leaves no direction by note or codicil, the court of chancery will dispose of it to such charitable purposes as it thinks fit.(*c*) So, if a testator bequeath a sum for such a school as he should appoint, and he appoints none, the court of chaucery may apply it for what school it pleases.(*d*) The doctrine has been pressed yet further; and it has been established that if the bequest indicate a charitable intention, but the object to which it is to be applied is against the policy of the law, the court will lay hold of the charitable intention and execute it for the purpose of some charity agreeable to the law, in the room of that contrary to it.(*e*) Thus, a sum of money bequeathed to found a Jews' synagogue has been taken by the court, and judicially transferred to the benefit of a foundling hospital!(*g*) And a bequest for the education of poor children in the Roman Catholic faith, has been decreed, in chancery, to be disposed of by the king at his pleasure, under his sign-manual.(*h*) [*11

Another principle equally well established is, that if the bequest be for charity it matters not how uncertain the persons or objects may be; or whether the persons who are to take are *in esse* or not; or whether the legatee be a corporation capable in law of taking or not; or whether the bequest can be carried into exact execution or not: in all these and the like cases, the court will sustain the legacy, and give it effect according to its own principles; and where a literal execution becomes inexpedient or impracticable, will execute it **cy pres.*(*i*) Thus, a devise of lands to the churchwardens of a parish (who are not a corporation capable of holding lands), for a charitable purpose, though void at law, will be sustained in equity.(*k*) So, if a corporation, for whose use a charity is designed, is not *in esse*, and cannot come into existence but by some future act of the crown, as for instance, a gift to found a new college, which requires an incorporation, the gift is valid and the court will execute it.(*l*) So, if a devise be to an existing corporation by a misnomer which makes it void at [*12

Abr. 193; s. c. Bridg. Duke 476; Moggridge *v.* Thackwell, 3 Bro. C. C. 517; s. c. 1 Ves. jr. 464; 7 Ibid. 36; Mills *v.* Farmer, 1 Merivale 55, 100; White *v.* White, 1 Bro. C. C. 12.

(*a*) Mills *v.* Farmer, 1 Meriv. 55, 100; Moggridge *v.* Thackwell, 7 Ves. 36; Attorney-General *v.* Berryman, 1 Dick. 168; Roper on Legacies 130.

(*b*) Mills *v.* Farmer, 1 Meriv. 55, 95; Moggridge *v.* Thackwell, 7 Ves. 36; White *v.* White, 1 Bro. C. C. 12.

(*c*) Attorney-General *v.* Syderfen, 1 Vern. 224; s. c. 2 Freem. 261, recognised in Mills *v.* Farmer, 1 Meriv. 55, and Moggridge *v.* Thackwell, 7 Ves. 36, 70.

(*d*) 2 Freem. 261; Moggridge *v.* Thackwell, 7 Ves. 36, 73, 74.

(*e*) De Costa *v.* De Pas, 1 Vern. 248; Attorney-General *v.* Guise, 2 Ibid. 266; Casey *v.* Abbot, 7 Ves. 490; Moggridge *v.* Thackwell, 7 Vern. 36, 75; Bridg. Duke 466.

(*g*) Ibid., and Mills *v.* Farmer, 1 Meriv. 55, 100.

(*h*) Cary *v.* Abbott, 7 Ves. 490.

(*i*) Attorney-General *v.* Oglander, 3 Bro. C. C. 166; Attorney-General *v.* Green, 2 Ibid. 492; Frier *v.* Peacock, Rep. temp. Finch, 245; Attorney-General *v.* Boultree, 2 Ves. jr. 380; Bridg. Duke 355.

(*k*) 1 Burn's Eccl. Law 226; Duke 33, 115; Com. Dig. Chancery, 2, N, 2; Attorney-General *v.* Combe, 2 Ch. Cas. 13; Rivett's case, Moore 890; Attorney-General *v.* Bowyer, 3 Ves. jr. 714; West *v.* Knight, 1 Ch. Cas. 135; Highmore on Mortm. 204; Tothill 34; Mills *v.* Farmer, 1 Meriv. 55.

(*l*) White *v.* White, 1 Bro. C. C. 12; Attorney-General *v.* Downing, Ambl. 550, 571; At-Attorney-General *v.* Bowyer, 3 Ves. jr. 714 727.

law.(*a*) So, where a devise was to the poor generally, the court decreed it to be executed in favor of three public charities in London.(*b*) So, a legacy towards establishing a bishop in America was held good, though none was yet appointed.(*c*) And where a charity is so given, that there can be no objects, the court will order a new scheme; but if objects may, though they do not, at present, exist, the court will keep the fund for the old scheme.(*d*) And when objects cease to exist, the court will new model the charity.(*e*)

In further aid of charities, the court will supply all defects of conveyances, where the donor hath a capacity and disposable estate, and his mode of donation does not contravene the provisions of any statute.(*g*) The doctrine is laid down with *great accuracy by Duke,(*h*) who says, that a disposition of lands, &c., to charitable uses is good, "albeit there be defect in the deed, or in the will, by which they were first created and raised, either in the party trusted with the use, where he is misnamed, or the like; or in the party for whose use, or that are to have the benefit of the use, or where they are not well named, or the like; or in the execution of the estate, as, where livery of seisin, or attornment, is wanting, or the like. And therefore, if a copyholder doth dispose of copyhold land to a charitable use, without a surrender; or a tenant in tail convey land to a charitable use, without a fine; or a reversion, without attornment or insolvency; and in divers such like cases, &c., this statute shall supply all the defects of assurance; for these are good appointments within the statute."(*i*) But a parol devise to charity out of lands, being defective as a will, which was the manner of the conveyance the testator intended to pass it by, it can have no effect as an appointment which he did not intend.(*k*) Yet, it has been nevertheless held, that where a married woman, administratrix of her husband, and entitled to certain personal estates belonging to him (viz., a *chose in action*), afterwards intermarried, and then, during coverture, made a will, disposing of that estate, partly to his heirs and partly to charity, the bequest, though void at law, was good as an appointment, under the statute of Elizabeth, for this reason, "that the goods in the hands of administrators are all for charitable uses, and the office of the ordinary and of the administrator is to em- *ploy them in pious uses, and the kindred *and children have no property nor pre-eminence but under the title of charity.(*l*)

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With the same view, the court of chancery was, in former times, most astute to find out grounds to sustain charitable bequests. Thus, an appointment under a will to charitable uses, that was precedent to the statute of Elizabeth, and thus utterly void, was held to be made good by the statute.(*m*) And a devise which was not within the statute was, nevertheless, decreed as a charity, and governed in a manner wholly different from that contemplated by the testator, although there was nothing unlawful in his intent; the lord chancellor giving as his reason, "*summa est ratio, quæ pro religione facit;*" and because the charity was for a weekly sermon, to be preached by a per-

(*a*) Anon., 1 Ch. Cas. 267; Attorney-General *v.* Platt, Rep. temp. Finch 221.

(*b*) Attorney-General *v.* Peacock, Rep. temp. Finch 245; Owens *v.* Bean, Ibid. 395; Attorney-General *v.* Syderfen, 1 Vern. 224; Clifford *v.* Francis, 1 Freem. 330.

(*c*) Attorney-General *v.* Bishop of Chester, 1 Bro. C. C. 144.

(*d*) Attorney-General *v.* Oglander, 3 Bro. C. C. 160.

(*e*) Attorney-General *v.* City of London, 3 Bro. C. C. 171; s. c. 1 Ves, jr. 243.

(*g*) Case of Christ's College, 1 W. Bl. 90; s. c. Ambl. 351; Attorney-General *v.* Rye, 2 Vern. 453, and Raithby's Notes; Rivett's Case, Moore 890; Attorney-General *v.* Burdett, 2 Vern. 755; Attorney-General *v.* Bowyer, 3 Ves. jr. 714; Damer's Case, Moore 822; Collinson's Case, Hob. 136; Mills *v.* Farmer, 1 Merivale 55.

(*h*) Duke 84, 85; Bridg. Duke 355.

(*i*) Duke 84, 85; Bridg. Duke 355; Christ's Hospital *v.* Hanes, Ibid. 370; 1 Burn's Eccl. Law 226; Tufnel *v.* Page, 2 Atk. 37; Tay *v.* Slaughter, Prec. Ch. 16; Attorney-General *v.* Rye, 2 Vern. 453; Rivett's Case, Moore 890; Kenson's Case, Hob. 136; Attorney-General *v.* Burdett, 2 Vern. 755.

(*k*) Jenner *v.* Harper, Prec. Ch. 389; 1 Burn's Eccl Law 226. And see Attorney-General *v.* Bains, Prec. Ch. 271.

(*l*) Damer's Case, Moore 822.

(*m*) Smith *v.* Stowell, 1 Ch. Cas. 195; Collinson's Case, Hob. 136.

son to be chosen by the greatest part of the best inhabitants of the parish, he treated this as a wild direction, and decreed that the bequests should be to maintain a catechist in the parish, to be approved by the bishop.(*a*) So, though the statute of Hen. VIII. of wills, did not allow of devises of land to corporations to be good, yet such devises to corporations for charitable uses were held good as appointments, under the statute of Elizabeth.(*b*) Lord Chancellor COWPER, in a case where he was called upon to declare a charitable bequest valid, notwithstanding the will was not executed according to the statute of frauds, and these cases were cited, observed, "I shall be very loth to break in upon the statute of frauds and perjuries in this case, as there are no instances where men are so easily imposed upon, as at the time of their dying, under the pretence of charity." "It is true, the charity of judges has carried several cases on the statute of Elizabeth great lengths; and this occasioned the distinction between operating by will and by appointment, which surely the makers of that statute never contemplated."(*c*)

It has been already intimated that the disposition of modern judges has been to curb this excessive latitude of construction *assumed by the court of chancery in early times. But, however strange some of the doctrines already stated may [*15 seem to us, as they have seemed to Lord ELDON, yet they cannot now be shaken, without doing (as he says) that, in effect, which no judge will avowedly take upon himself, to reverse decisions that have been acted upon for centuries.(*d*)

A charity must be accepted upon the same terms upon which it is given, or it must be relinquished to the right heir; for it cannot be altered by any new agreement between the heir of the donor and the donees.(*e*) And where several distinct charities are given to a parish, for several purposes, no agreement of the parishioners can alter or divert them to other uses.(*g*)

The doctrine of *cy pres*, as applied to charities, was formerly pushed to a most extravagant length;(*h*) but this sensible distinction now prevails, that the court will not decree execution of the trust of a charity, in a manner different from that intended, except so far as it is seen that the intention cannot be literally executed, but another mode may be adopted, consistent with the general intention, so as to execute it, though not in mode, yet in substance. If the mode becomes, by subsequent circumstances, impossible, the general object is not to be defeated, if it can be obtained.(*i*) And where there are no objects remaining to take the benefit of a charitable corporation, the court will dispose of its revenues by a new scheme, and upon the principles of *cy pres*. The rule is, that if lands are given to a corporation for charitable uses, which the donor contemplates to last for ever, the heir never can have the land back again; but if it becomes impracticable to execute the charity, another similiar charity must be substituted, so long as the corporation *exists. If the charity does not fail, *but* [*16 *the trustees or corporation fail*, the court of chancery will substitute itself in their stead, and carry on the charity.(*k*)

When the increased revenues of a charity extend beyond the original objects, the rule, as to the application of such increased revenues, is, that they are not a resulting trust for the heirs-at-law, but are to be applied to similiar charitable purposes, and to the augmentation of the benefit of the charity.(*l*)

(*a*) Attorney-General *v.* Combe, 2 Ch. Cas. 18,

(*b*) Griffith Flood's Case, Hob. 136.

(*c*) Attorney-General *v.* Bains, Prec. Ch. 261. And see Adlington *v.* Cann, 3 Atk. 141.

(*d*) Moggridge *v.* Thackwell, 7 Ves. 36, 87.

(*e*) Attorney-General *v.* Platt, Rep. temp. Finch 221. And see Margaret Professors, Cambridge, 1 Vern. 55.

(*g*) Man *v.* Ballet, 1 Vern. 42; 1 Eq. Cas. Abr. 99, pl. 4. And see Attorney-General *v.* Gleg, 1 Atk. 356; Ambl. 584.

(*h*) Attorney-General *v.* Minshall, 4 Ves. jr. 11, 14; Attorney-General *v.* Whitchurch, 3 Ibid. 141.

(*i*) Attorney-General *v.* Boultree, 2 Ves. 380, 387; s. c. 3 Ibid. 220; Attorney-General *v.* Whitchurch, Ibid. 141; Attorney-General *v.* Stepney, 10 Ibid. 22.

(*k*) Attorney-General *v.* Hicks, High. Mortm. 336, 353, &c.

(*l*) Attorney-General *v.* Earl of Winchelsea, 3 Bro. C. C. 373; High. Mortm. 187, 327; Ex parte Jortin, 7 Ves. 340; Bridg. Duke 588.

Charitable Bequests.

In former times, the disposition of chancery to assist charities was so strong, that, in equity, assets were held to satisfy charitable uses, before debts or legacies; though assets at law were held to satisfy debts, before charities. But even at law, charities were then preferred before other legacies.(*a*) And this, indeed, was in conformity to the civil law, by which charitable legacies are preferred to all others.(*b*) The doctrine, however, is now altered, and charitable legacies, in case of a deficiency of assets, abate in proportion as well as other pecuniary legacies.(*c*) And the courts have shown a disinclination to favor charities so far as to marshal a testator's assets, where the residue, bequeathed to charitable purposes, consists of mixed property, of real and personal estate, so as to direct the debts and other legacies to be paid out of the real estate, and reserve the personal to fulfil the charity, where the charity would be void as to the real estate.(*d*) Yet where there are general legacies, and the testator has charged his estate with payment of all his legacies, if the personal estate be not sufficient to pay the whole, the court has said, the charity shall be paid out of the personal estate, and the rest out of the real estate, that the whole may be performed *in toto*.(*e*)

It has been already stated, that charitable bequests are not void on account of any uncertainty as to the persons or objects *to which they are to be applied; *17]
although almost all the cases on this subject have been collected, compared and commented on with his usual diligence and ability by Lord Eldon, in two recent decisions. The first was the case of Moggridge *v.* Thackwell, 7 Ves. 36; s. c. 1 Ibid. 464; 3 Bro. C. C. 517, where the testator gave the residue of her personal estate to James Vaston, his executors and administrators, "desiring him to dispose of the same in such charities as he shall think fit, recommending poor clergymen, who have large families and good characters; and appointed Mr. Vaston one of her executors. Mr. Vaston died in her lifetime, of which she had notice; but the will remained unaltered. The next of kin claimed the residue, as being lapsed by the death of Mr. Vaston; but the bequest was held valid, and established. In the next case (Mills *v.* Farmer, 1 Meriv. 55), the testator, by his will, after giving several legacies, proceeded, "the rest and residue of all my effects I direct may be divided for promoting the gospel in foreign parts, and in England; for bringing up ministers in different seminaries, and other charitable purposes, as I do intend to name hereafter, after all my worldly property is disposed of to the best advantage." The bill was filed by the next of kin, praying an account and distribution of the residue, as being undisposed of by the will or any codicil of the testator. The Master of the Rolls held the residuary bequest to charitable purposes void for uncertainty, and because the testator expressed not a present, but a future, intention to devise this property. Lord Eldon, however, upon an appeal, reversed the decree, and established the bequest, as a good charitable bequest, and directed it to be carried into effect accordingly.

It has been made a question, whether a court of equity, sitting in one jurisdiction, can execute any charitable bequests for foreign objects in another jurisdiction. In the case last stated, no objection ocurred to the residuary bequest, on the ground, that it contemplated the promotion of the gospel in foreign parts. In the case of Mr. Boyle's will, the bequest was not limited in terms to foreign countries or objects, but it was applied *to a foreign object, under a decree of the court of chancery; and when *18]
that object failed, a new scheme was directed.(*g*) There are several other cases, in which charities for foreign objects have been carried into effect. In the Provost, &c., of Edinburgh *v.* Aubery, Ambl. 236, there was a devise of 3500*l.* South Sea annuities to the plaintiffs, to be applied to the maintenance of poor laborers, residing in Edinburgh and the towns adjacent; and Lord Hardwicke said, he could not give any directions

(*a*) High. Mortm. 67.
(*b*) Fielding *v.* Bond, 1 Vern. 230.
(*c*) Ibid., and Raithby's Note, 2.
(*d*) High. Mort. 355; Moff *v.* Hodges, 2 Ves. 52.
(*e*) Attorney-General *v.* Graves, Ambl. 158; Arnold *v.* Chapman, 1 Ves. 108.
(*g*) Attorney-General *v.* City of London, 3 Bro. C. C. 171; s. c. 1 Ves. jr. 243.

as to the distribution of the money, that belonging to another jurisdiction, that is, to some of the courts in Scotland; and therefore, he directed that the annuities should be transferred to such persons as the plaintiffs should appoint, to be applied to the trusts in the will. So, in Oliphant *v.* Hendrie, 1 Bro. C. C. 571, where A., by will, gave 300*l.* to a religious society in Scotland, to be laid out in the purchase of heritable securities in Scotland, and the interest thereof to be applied to the education of twelve poor children, the court held it a good bequest. In Campbell *v.* Radnor, Ibid. 171, the court held a bequest of 7000*l.* to be laid out in the purchase of lands in Ireland, and the rents and profits to be distributed among poor people in Ireland, &c., to be valid in law, So, a legacy towards establishing a bishop in America, was supported, although no bishop was yet established.(*a*) In the late case of Curtis *v.* Hutton, 14 Ves. 537, a bequest of personal estate for the maintenance of a charity (a college) in Scotland was established; and in another still more recent case, a bequest in trust to the magistrates of Inverness, in Scotland, to apply the interest and income for the education of certain boys, was enforced as a charity.(*b*) Nor is the uniformity of the cases broke in upon by the doctrine in De Garcia *v.* Lawson, 4 Ves. 443, note. There, the bequests were to Roman *Catholic clergymen, or for Roman Catholic establishments, and were considered as void and illegal, being equally against the policy and the enactments of the British legislature. [*19

In respect to the mode of administering charities in chancery, it is not easy to extract from the authorities any consistent doctrine. Where the trust is for definite objects, and a trustee is appointed to administer it, who is *in esse* and capable of performing it, all the court does, is to watch over the charity, and see that it is executed faithfully, and without fraud; and if the trustees should die, so that it remains unexecuted, the court will then act as trustee, and do as the trustees ought to do, if living. But where money is given to charity, generally, without trustees or objects selected, in some cases, the charity has been applied by the king, under his sign manual, and in others, by the court of chancery, according to its usual course, that is, by a scheme reported by a master and approved by the court. It is not easy to perceive upon what principle the one case has in practice been distinguished from the other. Lord Eldon has observed, "all I can say upon it is, I do not know what doctrine could be laid down, that would not be met with some authority upon this point; whether the proposition is, that the crown is to dispose of it, or the master, by a scheme."(*c*)

It is laid down in books of authority, that the king, as *parens patriæ*, has the general superintendence of all charities, not regulated by charter, which he exercises by the keeper of his conscience, the chancellor; and therefore, the attorney-general, at the relation of some informant, when it is necessary, files *ex officio* an information in the court of chancery to have the charity properly established and applied.(*d*) And, it is added, that the jurisdiction thus established does not belong to the court of chancery, as a court of equity, but as administering the prerogative and the duties of the crown.(*e*) And it seems also to be held, that the jurisdiction vested in the Lord Chancellor by the statute of Elizabeth, is personal, and not in his ordinary *or extraordinary jurisdiction in chancery; like that, in short, which he exercises as to idiots and lunatics.(*g*) It seems in the highest degree reasonable, that the king, as *parens patriæ*, should have a right to guard and enforce all charities of a public nature, by virtue of his general superintending power over the public interests, where no other person is intrusted with such right. But where money is given to charity, generally and indefinitely, without any trustees, there does not seem to be any difficulty in con- [*20

(*a*) Attorney-General *v.* Bishop of Chester, 1 Bro. C. C. 444.

(*b*) Mackintosh *v.* Townsend, 16 Ves. 330.

(*c*) Moggridge *v.* Thackwell, 7 Ves. 36, 83.

(*d*) 3 Bl. Com. 427; 2 Fonbl. Eq. b. 3, p. 2, c. 1, § 1, and note a.

(*e*) Cooper's Eq. Pl. xxvii. 2 Fonbl. Eq. b. 2, p. 2, c. 1; Lord Falkland *v.* Bertie, 2 Vern. 342; Mitf. Eq. Pl. 29; Bailiffs, &c. of Burford *v.* Lenthall, 2 Atk. 551.

(*g*) Bailiffs, &c. of Burford *v.* Lenthall, 2 Atk. 551; 2 Fonbl. Eq. b. 2, p. 2, c. 1, § 1, and note a, § 3, and note i.

sidering it as a personal trust devolved on the crown, to be executed by the crown; and whether it be executed by the keeper of the king's conscience, his Lord Chancellor, as his personal delegate, or by himself under his sign manual, is not very material, and may well enough be considered as an authority distinct from that belonging to a court of equity. But where there is a trust and trustees with some general or specific objects pointed out, or trustees for indefinite or general charity, it is not easy to perceive, why, as a matter of trust, a court of equity may not take cognisance of it, in virtue of its ordinary jurisdiction; and the better authorities would seem to countenance this view of the subject.(*a*) At all events, where there are trustees, and the trust is for a definite object, and sustainable in law, there seems no reason why a court of equity, as such, may not take cognisance of such trust, at the suit of any competent party, whether the attorney-general or any interested private relator, as well as of any other trust, the execution of which is sought of the court.

In respect, however, to cases of indefinite trusts, or trusts where some general objects are pointed out, the distinction which appears to be most reconcilable with the cases, and to be acted upon in the modern decision, is this: that where there is a general indefinite purpose, not fixing itself upon any object, the disposition is in the king,
*21] by sign manual; *but where the execution is to be by a trustee, with general or some objects pointed out, whether such trustee survive the testator or not, there, the administration of the trust will be taken by the court of chancery (either as personal delegate of the crown or as a court of equity), and managed under a scheme reported by a master, and approved by the court.(*b*)

As to the remedy for misapplication of the charity funds, &c., in cases within the statute of Elizabeth, a proper, though not an exclusive remedy, is by commission under the statute.(*c*) But as the statute does not extend to any college, hospital or free school, which have special visitors, or governors or overseers appointed by their founders,(*d*) it is necessary to consider what is the remedy for frauds or misconduct in such cases. As to this, it may be observed, that all trustees, who are the managers of the revenues of such charities, are subject to the general superintending power of the court of chancery, not as, of itself, possessing a visitatorial power or a right to control the charity, but as possessing a general jurisdiction of an abuse of trusts, to redress grievances, and suppress frauds.(*e*) And if a corporation be the mere trustee of a charity, and grossly abuses the trust, the court of chancery will take it away from them, and vest it in other hands.(*g*) But the general controlling power of the court over charities, does not extend to a charity regulated by governors, under a charter, unless they have also the management of the revenues, and abuse their trust; and this will not be presumed, but must be apparent, and made out in evidence.(*h*)

*22] *It seems, that with a view to encourage the discovery of charitable donations, given for indefinite purposes, it is the practice for the crown, to reward the

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(*a*) Moggridge *v.* Thackwell, 7 Ves. 36, 83, 85, 86; Mills *v.* Farmer, 1 Meriv. 55; Paice *v.* Archbishop of Canterbury, 14 Ves. 364; Attorney-General *v.* Mathews, 2 Lev. 167; Attorney-General *v.* Wansay, 15 Ves. 231; Attorney-General v. Price, 17 Ves. 371; Waldo *v.* Caley, 16 Ibid. 206.

(*b*) Ibid.

(*c*) Bridg. Duke 590, 602. This proceeding appears to have almost fallen practically into disuse. Edin. Review, vol. 31, p. 503. It has been mentioned before, that the proceedings may be by information or original bill; and by a recent statute (52 Geo. III., c. 101), a more summary remedy is given by petition.

(*d*) Stat. 43 Eliz., c. 4, 2d proviso. Attorney-General *v.* Smart, 1 Ves. 72; Attorney-General *v.* Harrow School, 2 Ibid. 551.

(*e*) Fonbl. b. 2, p. 2, c. 1, § 1, note *a*; and the authorities cited by Mr. Justice Story, in the case of Dartmouth College *v.* Woodward (*ante*). See also, Attorney-General *v.* Utica Ins. Co., 2 Johns. Ch. 371, 384, 386.

(*g*) Attorney-General *v.* Mayor, &c., of Coventry, 7 Bro. P. C. 235; Attorney-General *v.* Earl of Clarendon, 17 Ves. 491, 499; Attorney-General *v.* Utica Ins. Co., 2 Johns. Ch. 389. Bridg. Duke 574, &c.

(*h*) Attorney-General *v.* Foundling Hospital, 2 Ves. jr. 42.

persons who make the communication, if they can bring themselves within the scope of the charity, by giving them a part of the fund; and the like practice, whether well or ill founded, takes place in relation to escheats.(*a*)

These are the principal doctrines and decisions under the statute of Elizabeth, of charitable uses, which it seemed most important to bring in review before the learned reader. And it may not be useless to add, that the statute of mortmain and charities of the 9th of George II., c. 36, has very materially narrowed the extent and operation of the statute of Elizabeth, and has formed a permanent barrier against what the statute declares a "public mischief," which "had of late greatly increased, by many large and improvident alienations or dispositions made by languishing and dying persons, or by others, to uses, called charitable uses, to take place after their deaths, to the disherison of their lawful heirs." It was the original design of this note, to have included a summary view of the principal clauses of this statute, and the decisions which have followed it; but it is already extended to so great a length, that it is thought best to omit it. The learned reader will, however, find a very accurate statement of both in Mr. Justice Blackstone's Commentaries (2 Bl. Com. 268), and in Bridgman's Duke on Charitable Uses, and Highmore's History of Mortmain and Charitable Uses. This statute was never extended to or adopted by the colonies, in general.(*b*) But certain of the provisons of it, or of the older statutes of mortmain (7 Edw. I., stat. 2, *De Religiosis;* the 13 Edw. I., c. 32; the 15 Richard II., c. 5; and the 23 Hen. VIII., c. 10), have been adopted by some of the states of the Union;(*c*) and it deserves the consideration of every wise and enlightened American legislator, whether provisions similar to those of *this celebrated statute are not proper to be enacted in this country, with a view to prevent undue influence and imposition upon pious and feeble minds, in their last moments, and to check that unhappy propensity, which sometimes is found to exist, under a bigotted enthusiasm, and the desire to gain fame as a religious devotee, at the expense of all the natural claims of blood and parental duty to children. [*23

NOTE II.

Different public Acts by which the Government of the United States has recognised the existence of a Civil War between Spain and her American Colonies.

Extract from the President's Message to Congress, November 17th, 1818.

"In suppressing the establishment at Amelia Island, no unfriendliness was manifested towards Spain, because the post was taken from a force which had wrested it from her. The measure, it is true, was not adopted in concert with the Spanish government, or those in authority under it; because, in transactions connected with the war in which Spain and the colonies are engaged, it was thought proper, in doing justice to the United States, to maintain a strict impartiality towards both the belligerent parties, without consulting or acting in concert with either. It gives me pleasure to state, that the governments of Buenos Ayres and Venezuela, whose names were assumed, have explicitly disclaimed all participation in those measures, and even the knowledge of them, until communicated by this government, and have also expressed their satisfaction that a course of proceedings had been suppressed, which, if justly imputable to them, would dishonor their cause.

(*a*) *Per* Lord ELDON, in Moggridge *v.* Thackwell, 7 Ves. 36, 71.

(*b*) Attorney-General *v.* Stewart, 2 Merivale 143.

(*c*) 3 Binn. Appendix, 626; Laws of New York, sess. 36, c. 60, § 4; 2 Caines Cas. 337.

South American Civil War.

"The civil war, which has so long prevailed between Spain, and the provinces in
*24] South America, still continues without any *prospect of its speedy termination. The information respecting the condition of those countries, which has been collected by the commissioners, recently returned from thence, will be laid before congress, in copies of their reports, with such other information as has been received from other agents of the United States.

"It appears, from these communications, that the government at Buenos Ayres declared itself independent, in July 1816, having previously exercised the power of an independent government, though in the name of the king of Spain, from the year 1810: that the Banda Oriental, Entre Rios and Paraguay, with the city of Santa Fe, all of which are also independent, are unconnected with the present government of Buenos Ayres: that Chili had declared itself independent, and is closely connected with Buenos Ayres: that Venezuela has also declared itself independent, and now maintains the conflict with various success; and that the remaining parts of South America, except Monte Video, and such other portions of the eastern bank of the La Plata as are held by Portugal, are still in the possession of Spain, or in a certain degree, under her influence.

"By a circular note addressed by the ministers of Spain to the allied powers with whom they are respectively accredited, it appears, that the allies have undertaken to mediate between Spain and the South American provinces, and that the manner and extent of their interposition would be settled by a congress, which was to have met at Aix-la-Chapelle, in September last. From the general policy and course of proceeding observed by the allied powers in regard to this contest, it is inferred, that they will confine their interposition to the expression of their sentiments, abstaining from the application of force. I state this impression, that force will not be applied, with the greater satisfaction, because it is a course more consistent with justice, and likewise authorizes a hope that the calamities of the war will be confined to the parties only, and will be of shorter duration.

"From the view taken of this subject, founded on all the information that we have been able to obtain, there is good cause to be satisfied with the course heretofore pur-
*25] sued by the United *States, in regard to this contest, and to conclude, that it is proper to adhere to it, especially in the present state of affairs."

Extract from Mr. Commissioner Rodney's report.

"Their private armed vessels are subjected to very strict regulations, agreeable to their prize code, which is among the original papers presented, and herewith delivered. It may be proper, in this place, to introduce the subject of the irregular conduct of the privateers under the patriot flag, against which the commissioners were directed to remonstrate. Having taken an opportunity of explaining to Mr. Tagle, the secretary of state, the proceedings of our government relative to Amelia Island and Galveston, agreeable to their instructions, the commissioners embraced a suitable occasion, to urge the just cause of complaint, which the malpractices of private armed vessels, wearing the patriot colors, had furnished our government. On both topics they had long and interesting conversations. With the conduct of the government respecting Amelia Island and Galveston, Mr. Tagle expressed himself perfectly satisfied, and he disclaimed for his government any privity or participation in the lodgments made at those places, by persons acting in the name of the patriots of South America. In reference to the acts of cruisers under the patriot flags, he said, he was sensible that great irregularities had occurred, though his government had done everything in their power to prevent them, and were willing, if any instance of aggression were pointed out, to direct an inquiry into the case, and if the facts were established, to punish those concerned, and redress the individuals. He professed his readiness to adopt any measures that would more effectually prevent a recurrence of such acts, in which he expressed his belief, that the privateers of Buenos Ayres had rarely participated, though the character of the government had suffered from the conduct of others. He stated, that they had, on

one occasion, sent out some of their public vessels to examine all cruisers wearing the Buenos Ayrean flag, to see that they were lawfully commisioned, *and to ascertain whether they had violated their instructions." [*26

Extract from Mr. Commissioner Bland's report.

"In a short time after our introduction to the director, and in about a week after our arrival, we waited on the secretary of state, as being the most formal and respectful mode of making our communications to this new and provisional government. We stated to the secretary, that our government had not viewed the struggle now pending between the revolutionary provinces of South America and Spain, merely as a rebellion of colonists; but as a civil war, in which each party was entitled to equal rights and equal respect; that the United States had, therefore, assumed, and would preserve with the most impartial and the strictest good faith, a neutral position; and in the preservation of this neutrality, according to the established rules of the law of nations, no rights, privileges or advantages would be granted by our government to one of the contending parties, which would not, in like manner, be extended to the other. The secretary expressed his approbation of this course; but, in an interview subsequent to the first, when the neutral position of the United States was again spoken of, he intimated a hope, that the United States might be induced to depart from its rigid neutrality in favor of his government; to which we replied, that as to what our government might be induced to do, or what would be its future policy towards the patriots of South America, we could not, nor were we authorized to say anything.

"We stated to the secretary, that it had been understood, that many unprincipled and abandoned persons, who had obtained commissions as privateers, from the independent patriot government, had committed great depredations on our commerce; and had evidently got such commissions, not so much from any regard to the cause of independence and freedom, as with a view to plunder; and that we entertained a hope, that there would be a due degree of circumspection exercised by *that government, in granting commissions, which in their nature were so open to abuse. [*27

"The secretary replied, that there had hitherto been no formal complaint made against any of the cruisers of Buenos Ayres; and if any cause of complaint should exist, his government would not hesitate to afford proper redress, on a representation and proof of the injury; that the government of Buenos Ayres had taken every possible precaution in its power, in such cases; that it had established and promulgated a set of rules and regulations for the government of its private armed vessels, a copy of which should be furnished us; and that it had, in all cases, as far as practicable, enjoined and enforced a strict observance of those regulations, and the law of nations."

Extract from Mr. Commissioner Bland's report relative to Chili.

"I then told him, that the government of the United States had been informed, that some of the cruisers, under the real flag of the patriot authorities, had committed considerable violations on our commerce; that if any such wrongs were to be committed by armed vessels, sailing under the Chileno flag, he could not but perceive, how inevitably such acts would tend to disturb all harmony between the two countries, and to crush, in the very formation, every friendly relation that might be begun, and desired to be matured, between the two nations; since my government would feel itself bound to protect the rights of its citizens against the insults or injuries of any other people, however deeply it might regret the repulsive measures it was thus driven to adopt; and that the president would wish to be informed, if there were any prize courts yet established in the country; and, if any, what regulations had been adopted for the government of the public and private armed vessels of Chili. The director said, that whatever cause of complaint the United States might have against the people of any other of the patriot powers, none, he felt satisfied could be made against Chilenos, or those under the flag of Chili; because, until very *lately, there were no shipping or vessels of any kind belonging to it, excepting, indeed, some fishing boats; and [*28

that within a few months only, some few vessels had been commissioned; that he had heard of abuses committed under the flag of other patriot powers; and to prevent the like, as far as practicable, from being perpetrated by those of Chili, it had been determined to put on board each, an officer, and such a number of marines as would be able to control and prevent the mischievous propensities of seamen; that with regard to matters of prize, they were brought before the ordinary and temporary tribunals of the country, until more formal and systematic institutions could be established: and, that for the regulation and government of armed vessels, a set of rules and orders had been adopted, a copy of which should be furnished me, which was accordingly handed me, and accompanies this as document marked A."(*a*)

An Ordinance of the Government of Buenos Ayres, regulating Privateers.

By the Supreme Director of the United Provinces of South America.

The bloody war which King Ferdinand VII. has, since his restoration to the throne of his ancestors, prosecuted, through his myrmidons, against all the inhabitants of the new world, who have claimed their natural freedom, demands that a recourse should be had to those measures of retaliation, which the law of nations permits, in order to make the Spanish nation sensible of the consequences attending the barbarous obstinacy of her monarch, fascinated by corrupted ministers, against the just claims of the injured Americans.

The insults offered to mankind by the cruel agents of the Court of Madrid, and the approbation by which it has confirmed all the acts of devastation, which, in contempt of divine and human laws, the Spanish leaders have committed, both with fire and
*29] sword, through all parts of America, unfortunately visited *by them, would, in the opinion of all the world, justify any act of reprisals. But being unwilling to tarnish, by acts unworthy of an enlightened age, the holy principles on which the emancipation of the United Provinces of the South rests, and resolved to regulate my conduct by that system of war which is received among civilized nations; being likewise aware of the advantages obtained by the privateers of the free governments of America: I have determined to give a suitable encouragement and extent to the hostilities by sea, in order to increase the losses which King Ferdinand himself, in his decree of the 8th of February of the present year, confesses to have already been caused to his subjects by this kind of warfare, which is to be vigorously prosecuted, until Spain shall acknowledge the independence proclaimed by the sovereign congress of these provinces, with the direction and security of which I am intrusted.

And for the purpose of intercepting the navigation and commerce of both countries, by opposing the naval force equipped in regular form, by the state or by private individuals, I have resolved, that privateering shall henceforth be continued against the subjects of Ferdinand VII. and their property, and that the same be done, strictly observing the provisions and regulations laid down and enacted in the following provisional Ordinance:

A provisional Ordinance to regulate Privateering.

Art. I. This government will grant commissions or letters of marque to those persons who may apply for the same, to arm any vessel, in order to act as a privateer against all vessels sailing under the enemy's flag; the requisite bond being previously given therefor, at the naval department. In such application, a description must be given of the kind of vessel intended for that purpose, her tonnage, arms, ammunitions and crew.

II. A commission being granted to arm any vessel as a privateer, the commandant of the marine will give, by all the means within his power, every facility to expedite
*30] the fitting out of *any such vessel, allowing her to receive all the men she may require, excepting such as are enlisted for the service of the state, or actually

(*a*) This document corresponds *verbatim* with the prize code of Buenos Ayres which follows.

employed therein. The equipment of the vessel being finished, the said commandant will deliver to her captain a copy of this ordinance, together with all other regulations made known to him through the private channel of communications of the naval department, touching the manner in which he is to act, in particular cases, with neutral vessels, more especially, of such nations the flags of which may be entitled to certain immunities or privileges arising from the treaties or agreements made with them for the punctual observance thereof in what concerns them.

III. The officers of the commissioned vessels or privateers are under the protection of the laws of these United Provinces; and they shall enjoy, even if foreigners, all the privileges and immunities of any other citizen thereof, whilst employed in their service.

IV. The owners of such privateers are at liberty to enter into any agreement they may think fit, with the officers and crew of the same, provided they do not contain any clause contrary to the laws and ordinances of the government. It being the duty of the owners, as aforesaid, to present a copy of the agreements they may make to the department of the general commandant of the marine, where care must be taken that the same be strictly fulfilled.

V. The owners of privateers, on giving bond, will be furnished from the public magazines of the state with the guns, muskets, gunpowder and ammunitions they may be in want of, for the complete equipment of the privateer; under the condition to return, after the expiration of the cruise, the articles thus supplied; they not being obliged to make any allowance for the deterioration or consumption thereof, caused by their use in the service. And in case of either wreck or capture of the privateer, the same being proved, they shall be discharged from all responsibility.

VI. The privateers are to be visited, at the time of their departure, by the commissioners appointed by the commandant-general of the marine, who shall read to them the penal laws, *a copy whereof must be given to their commanders, with injunctions to read them to the crew, once a week, mention of which circumstance is [*31
to be made in the certificate of the visit; should the privateers be cleared out in friendly ports, they shall be visited by the consuls or agents of the government, in pursuance of their private instructions.

VII. All merchandise, liquors, and other articles fit for the consumption of the country, which may be imported as proceeding from captured cargoes, must be appraised by the custom-house, the same as any other cargo of commerce, and out of the sum total of duties which may result therefrom, a third part shall be deducted for the benefit of the captors.

VIII. All prizes must be sent to the ports of these United Provinces, there to be adjudged in the customary lawful way in such cases,; but should there occur any extraordinary circumstance to prevent it, the commander of the privateer, consulting his security, may exercise his own discretion in this respect, reserving documents justifying the same, in order to present them in due time before the competent tribunal.

IX. Silver and gold, whether coined or in bars, or in bullion, being a capital proceeding from capture, shall pay to the treasury of the state, at the rate of six *per centum*, as a compensation for the benefits granted in the fifth and seventh articles.

X. Silver and gold, manufactured into articles of luxury, shall, on their importation, pay the same duties as any other commercial article, according to the particular valuation that may be made of them.

XI. The privateers that may take from the enemy important communications, officers of rank, &c., or that may cause similar damages to the enemy, shall be rewarded in a manner worthy the generosity of the government, and in proportion to the importance of the service they may have thus rendered.

XII. The government offers a reward to all privateers that shall capture a transport of the enemy with troops, ammunition or other warlike accoutrements, destined to commit hostilities against the free countries of America, or to reinforce any part of the Spanish dominions: which reward shall be regulated *according to the circumstances of the case, and in proportion to the amount of the capture. [*32

XIII. The commanders of the privateers employed to destroy the Spanish commerce, without being cruel in the treatment of the prisoners, shall burn and sink on the high seas every enemy's vessel which they may think proper not to man as a prize, owing to her small value. And they are prohibited, under the penalties which the case may require, either to restore or leave in the possession of the enemy, under any pretext whatever, any vessel of the said class; any favor of this nature being considered as an hostility against the United Provinces.

XIV. Captured vessels shall be free of all duties, those of the port excepted.

XV. All articles of war captured shall be free of duties. In case the same are wanted by this government, it may take them at the rate of ten *per centum* below the current prices in the market.

XVI. Should any negro slaves be captured, they must be sent to the ports of these United Provinces; and the government will allow as a bounty, the sum of fifty dollars for each of such slaves as may be fit to take up arms, from the age of twelve to forty years inclusively; they being obliged to serve four years in the armies, and then they shall be free of duties. Should they be either over or under that age, or unfit for the army, they will be absolutely free, and this government will distribute them in guardianship.

XVII. Any negroes captured, that on account of the blockade or unfitness of the vessel, &c., cannot be brought into the ports of these United Provinces, shall be sent to those of the free nations of America, and there given up to the disposal of those governments, with the express condition not to sell them as slaves, under the penalties to the transgressors of being deprived of all their privileges (whatever their services may be), and also of the protection of the laws of these United Provinces, who detest slavery, and have prohibited this cruel traffic in human beings.

*33] XVIII. The cognisance of the prizes which the privateers *may bring or send into our ports shall exclusively belong to our courts.

XIX. Should it be declared by the sentence of the court, that the captured vessel is not a lawful prize, or that there is no reason to detain her, she shall be forthwith set at liberty, without causing her the least expense, being exempted even from the duties of the port. And in case of said vessel being detained any longer, under that or any other pretext, all the damages which on that account may fall on her owners, shall be laid to the charge of the persons causing the same.

XX. If the captor does not acquiesce in the sentence of the court of prizes, and intends to appeal from it, having a special power from the parties interested, he is allowed so to do to the Supreme Director, on his giving, previously to the entering of such an appeal, the proper bond, to the satisfaction of the captured captain, to answer unto him for all the damages and detriments which may have a right to claim of the said captor, after the confirmation of the first sentence, on account of the detention and demurrage, loss of time and freight, damages, and deterioration of both vessel and cargo, and any other occurrences. Which damages, together with the costs of prosecution, shall be paid unto the captured captain by the captor, before his leaving the port; and in case of his not being able to make payment, recourse shall be had to the bonds or sureties he may have given, who, without any further step or delay, shall be compelled to do it, by all the rigor of the law.

XXI. No person enjoying a salary from the naval department shall exact any fees, stipend or contribution, for services rendered in the adjudication of prizes. They are also prohibited to take or appropriate to themselves any merchandise, or other articles of prize goods, under the penalty of confiscation, and of the loss of their employment.

XXII. Privateers and letters of marque are authorized to board all commercial vessels of any nation, and to oblige them to exhibit their sea-letters, passes, commissions and passports, together with the documents showing the ownership of the vessel, charter-parties or agreements of freight, the journal or log-book, the *roll d'equipage*,

*34] and the lists of the crew and passengers. *This examination shall be made, without employing any violence, or causing any damage or considerable detention

to the vessels on board whereof the same is to be performed, and whose master or captain, with the above-said documents, shall be ordered on board the privateer, that her captain may attentively examine them himself, or cause the same to be done by the interpreter he may have for that purpose. And in case no cause be found to detain the vessel any longer, she shall be permitted freely to continue her navigation. Should any vessel resist this examination, the privateer may compel her to do it, by force. But the officers, as well as other individuals belonging to the crews of said privateers, can in no case exact or require any contribution from the captain, sailors or passengers of the vessels they may board, neither cause, nor permit to be caused, to them, any extortion or violence of any kind whatsoever, under the penalty of being exemplarily punished, even unto death, according to the enormity of the case.

XXIII. When the captain of the vessels on board of which there shall be any articles belonging to enemies, shall *bonâ fide* declare them so to be, the removal thereof shall be made, without interrupting the navigation or detaining them longer than it shall be necessary, the safety of the vessel permitting the same. In this case, the captains shall be furnished with a receipt for the articles thus removed, therein expressing all the circumstances attending the same; and, should the privateer be unable to pay them in cash, the proportionate amount of freight of said articles, up to the place of their destination, according to the bills of lading or agreement of freight, he will furnish them with a note or draft for the same amount on the owner or agent of the said privateer, who shall be obliged to pay it, on its being presented; the captains or commanders of the privateers being hereby ordered to bring, in such cases, the declaration made by the captain of the detained vessel, signed by him and authenticated in the most formal manner.

XXIV. All vessels found navigating without lawful passes, sea-letter, or commissions from the republics, provinces or states, having authority to grant them, shall be detained; as well as those that may fight under a flag other than that of the *prince or state by which their commission may have been granted; as likewise [*35
such as may be found holding different commissions from several princes or states; all of which are declared a good prize; and in case of their being armed in war, their commanders and officers shall be considered as pirates.

XXV. Vessels of pirates, and such as may have been taken possession of by their revolted crews, shall be declared good prize, together with all the articles appertaining thereto, or found on board the same; excepting such as may be proved to belong to persons who neither directly or indirectly have contributed to the piracy, and are not enemies.

XXVI. It being unlawful, within the jurisdiction of this state, to arm any vessel in order to act as a privateer, without my permission, as likewise to admit, for that purpose, a commission or letters of marque from any other prince or republic, even if allied with this, any vessel found on the high seas, with such commissions, or without any commission at all, shall be adjudged a good prize, and her captain or commander punished as pirates.

XXVII. All armed vessels, whether commissioned cruisers, or merchant vessels with letters of marque, navigating under the flag, or with a commission from princes or states enemies to this government, shall be good prize, together with all the articles that may be found on board thereof, even if belonging to citizens of these United Provinces, in case of their having shipped them after the delaration of war, and the requisite time being elapsed for their having notice thereof.

XXVIII. Merchant vessels belonging to any nation whatsoever, that may make any defence, after the privateer's hoisting up her flag, shall be declared good prize, unless her captain should prove that the privateer gave him sufficient motive for such a resistance.

XXIX. Such vessels as may be found without the papers and documents specified in the 22d article, or the most important of them, to wit, the sea-letter, pass or commission, the bills of lading of the cargo, and other documents, in order to prove [*36
that it, as well as the vessel, are neutral property, shall be *declared a good

prize; unless on proof of their being lost by inevitable accident. All the documents that may be presented must be signed in due form, in order to be admitted in proof.

XXX. Should the captains, or other individuals of the vessels detained by the privateers, or by any of the vessels belonging to the navy of the state, throw overboard any papers; if this fact be proved in due form, by that very act, they shall be declared good prize. And the same construction is to be given to the foregoing, and any other articles touching the same matter.

XXXI. Privateers are prohibited to attack, to commit any kind of hostilities, or to capture, the vessels of the enemy, that may be found in the ports of allied or neutral princes or states; as likewise those that may be within cannon-shot of their fortifications. It being declared, in order to remove all doubts, that the distance of the cannon-shot must be observed, even if there should be no batteries on the spot where the capture may take place, provided the distance be the same, and that the enemy shall likewise respect this immunity in the territory of the neutral or allied powers.

XXXII. The vessels that privateers may capture in the ports, or within the reach of the cannon-shot of the territory of allied or neutral powers, even in the case of their being in fresh pursuit, and attacking them from sea, are declared to be no prize, as taken in a spot which is entitled to immunity; provided the enemy respect the same in like manner.

XXXIII. Every privateer that may retake a national vessel within twenty-four hours after her capture, shall be entitled to one-half of the value of said prize for salvage, the other half being restored for the benefit of the original owner of said vessel; which division is to be made speedily and summarily, in order to diminish the costs as much as possible. But if the re-capture should take place after the lapse of twenty-four hours from the capture, the privateer thus retaking her shall be entitled to the whole value of the same.

XXXIV. If a vessel should be found on the sea, or brought into our ports, without the bills of lading of her cargo, or other documents by which the ownership thereof
*37] may be ascertained, *and not having on board persons belonging to her own crew, both the captor and the captain of said prize shall be separately examined touching the circumstances in which the said vessel was found when taken possession of. Her cargo is likewise to be inspected by intelligent persons, and every possible means resorted to, in order to discover the true owner. Should this not be found out, an inventory of the whole shall be made, and everything kept deposited, to restore them to whomsoever shall, within a year, prove to be such; unless there should be ground to declare the same good prize; giving, in all events, the third part of the value to the captors. If the owner does not appear in the above said term, the other two remaining thirds shall be divided, as derelict goods, into three parts; one of which is likewise to be given to the captors, and the other two, to be applied to the use of the state.

XXXV. In any of the aforesaid cases, and when the privateer shall detain a vessel, care shall be taken to collect all her papers, of what kind soever they may be, and that the clerk shall make a correct memorandum thereof, giving a receipt to the captain or supercargo of the vessel thus detained, for them; and warning him not to conceal any papers he may have, it being declared, that only such as he may exhibit shall be admitted in the adjudication of the capture. This being done, the captain of the privateer shall secure the papers in a bag or package, sealed; which he must deliver to the prize-master, with orders to deliver the same to the government. The captain of the privateer, or any individual of her crew, who from any motive whatever, may conceal, break or embezzle any of said papers, shall be condemned to corporal punishment, as the circumstances of the case may require; the captain being over and above obliged to make good the damages; and other individuals to be sent to the public works for ten years.

XXXVI. The captain of the privateer shall, at the same time, take care to have the hatches of the vessels thus detained, nailed up, and to seal them in such a manner as

to render it impossible to open them without breaking the seals. He must secure the keys of the cabin, and other passages, and cause all the articles that may be found on deck, to be locked up—taking *down, if the time should permit it, a memorandum of everything that may be easily mislaid, in order to put them under the charge of the person who shall be appointed to command the same vessel. [*38

XXXVII. The articles that may be found on deck, or in the cabin, state-rooms or forecastle, shall not be permitted to be plundered, the right of so doing (commonly called *pendolage*), being absolutely prohibited; which, however, may be tolerated only in the case of the vessel's having shown resistance, even to the point of being boarded. But care must always be taken to prevent the disorders that an excessive license may produce.

XXXVIII. When the crew of a vessel, detained as aforesaid, shall be removed on board the privateer, the clerk shall, in the presence of the master, take a deposition from him, the mate and other individuals of such detained vessel, touching the circumstances of her navigation, voyage and cargo—writing down everything that may be necessary to the adjudication of the capture. He is also to interrogate them, whether they have on board any jewels or other valuables, not expressed in the bills of lading of the cargo, in order that proper measures may be taken to prevent their being embezzled.

XXXIX. The prize-master appointed to command any vessel, detained as aforesaid, shall be furnished with a detailed information, comprising everything that may appear from the above mentioned depositions—making him responsible for whatever, owing to his omission or fault, may be lost. And it is hereby declared, that any person who shall, without license, break open the sealed hatches, trunks, bales, casks, packages or lockers, where there may be any articles of merchandise, shall not only lose that part which of right might belong to him, should they be declared a good prize, but a prosecution shall be instituted against him, and be punished according to the result thereof.

XL. No other papers or documents are to be admitted, in order to decide upon the lawfulness or unlawfulness of the capture, but those that were produced and found on board the prize vessel. However, if, in case of a defect of papers to determine the cause, the captain of the captured vessel should *offer to prove his having lost them by unavoidable accident, the court will grant him a sufficient term for that purpose; regarding the summary manner with which such causes are to be determined. [*39

XLI. If, before sentence is pronounced on the prize, it should become necessary to unload the whole or part of the cargo, in order to prevent the loss thereof, the hatches are to be broken open in the presence of the commandant of the marine, or commissioners appointed by him, and of the respective parties concerned, who must be present at that act. An inventory shall then be made of all the articles that may be unladen; which with the assistance and knowledge of the officer of the revenue appointed by the collector of the customs, must be deposited either in the hands of a trusty person, or in store-houses of which the master or supercargo of the captured vessel is to keep a key.

XLII. Should the sale of any articles be deemed necessary, owing to the impossibility of preserving them, such sale must be effected at public auction, with all the customary solemnities, in the presence of the captured captain, and with the assistance of the officer of the custom-house, as aforesaid; and the proceeds thereof are to be deposited with a trusty person, to be delivered to whom the same may belong, after the sentence is pronounced on the capture.

XLIII. No person, whatever his rank or condition may be, is permitted secretly to buy or conceal anything, knowing it to belong to the prize or detained vessel, under the penalty of making restitution for the same, and of a fine, triple the value of the goods concealed or clandestinely bought, and even of corporal punishment, as the case may be; the cognisance of which causes shall exclusively belong to the courts of prize, as incidental thereto.

XLIV. If the vessel detained should not be condemned as good prize, her master or owner, together with her officers and crew, shall be forthwith reinstated in the possession of the same; restoring unto them whatever may belong to her, without retaining the least thing. She is to be furnished with a suitable safe-conduct, in order that she may prosecute her voyage, without any further detention; she is declared free of
*40] the *duties of the port, and before her departure is to be indemnified by the captor, for all the expenses, damages and losses that may have been caused to her, and which she may have a right to claim, with justice, should her case be comprehended among those specified in the 22d and 30th articles. But such claim is not to be admitted, if she should have given reasonable cause for suspicion to the capturing vessel, or incurred any other penalty comprised in this ordinance, in consequence of which a prosecution may have been instituted; all of which may appear from the proceedings had thereon.

XLV. Should the captured vessel be condemned as good prize, the captors shall be permitted the free use of her, previously paying the duties due to the treasury of this government. The whole amount resulting from sales of the captures made by vessels of war, shall be divided into two parts; one of them containing three-fifths, for the use of the crew and mariners, and the other two-fifths for the officers. No person, whether belonging to the navy or army, being a passenger, or going as a transport on board said vessels, at the time of the capture, shall, under any pretext whatever, be comprehended in the distribution. But it shall be the duty of the commander of such vessel to inform the chief officer of the naval department, whether any of the persons going on board as passenger, or otherwise, has distinguished himself by a special service in the action: to the end, that if he should deem it just, he may order such person to share according to his rank, as if he had been comprehended amongst the number belonging to the complement of the vessel.

XLV. Any other decrees, orders or regulations, prior or contrary to this present provisional ordinance, are, by virtue hereof, declared void anp without any effect.

Done at the Fortress of Buenos Ayres, on the 15th day of May 1817.

JUAN MARTIN DE PUEYRREDON.

MATHIAS DE YRIGOYEN,
Secretary of War and of the Navy.

The foregoing is a copy from the original.

YRIGOYEN.

*41] *Official Report, &c., of the Secretary of State to Congress.

Washington, Jan. 29. I transmit to the house of representatives, in compliance with the the resolution of the 14th of this month, a report from the secretary of state, concerning the applications which have been made by any of the independent governments of South America, to have a minister or consul-general accredited by the United States, with the answers of this government to the applications addressed to it.

JAMES MONROE.

The Report.

The secretary of state, to whom has been referred the resolution of the house of representatives, of the 14th inst., requesting of the president information whether any application has been made by any of the independent governments of South America, to have a minister or consul-general accredited by the government of the United States, and what was the answer given to such application; has the honor of submitting copies of applications made by Don Lino de Clemente, to be received as the representative of the republic of Venezuela; and of David C. De Forest, a citizen of the United Provinces, to be accredited as consul-general of the United

Provinces of South America, with the answers respectively returned to them. The reply of Mr. de Forest is likewise inclosed, and copies of the papers, signed and avowed by Mr. Clemente, which the president considered as rendering any communication between this department and him, other than that now inclosed, improper.

It is to be observed, that while Mr. Clemente, in March 1817, was assuming, with the name of deputy from Venezuela, to exercise with the United States powers transcending the lawful authority of any ambassador, and while in January 1818, he was commissioning, in language disrespectful to this government, Vincente Pazos, in the name of the republic of Venezuela, *to "protest against the invasion of Amelia Island, and all such further acts of the government of the United States, as [*42 were contrary to the rights and interests of the several republics, and the persons sailing under their respective flags, duly commissioned;" he had, himself, not only never been received by the government of the United States, as deputy from Venezuela, but had never presented himself to it in that character, or offered to exhibit any evidence whatsoever, of his being invested with it. The issuing of commissions, authorizing acts of war against a foreign nation, is a power which even a sovereign cannot lawfully exercise, within the dominions of another at amity with him, without his consent. Mr. Pazos, in his memorial to the president, communicating the commission signed by Mr. Clemente, at Philadelphia, and given to General McGregor, alleges, in its justification, the example of the illustrious Franklin, in Europe; but this example, instead of furnishing an exception, affords a direct confirmation of the principle now advanced. The commissions issued by the diplomatic agents of the United States in France, during our revolutionary war, were granted with the knowledge and consent of the French government, of which the following resolution from the secret journal of congress, of the 23d of December, 1776, is decisive proof:

"Resolved, that the commissioners (at the court of France) be authorized to arm and fit for war any number of vessels, not exceeding six, at the expense of the United States, to war upon British property; and that commissions and warrants be for this purpose sent to the commissioners: provided the commissioners be well satisfied this measure will not be disagreeable to the court of France."

It is also now ascertained, by the express declaration of the supreme chief, Bolivar, to the agent of the United States, at Angostura, "that the government of Venezuela had never authorized the expedition of General McGregor, nor any other enterprise against Florida or Amelia." Instructions have been forwarded to the same agent, to give suitable explanations to the government of Venezuela, of the motives for declining further communication with Mr. Clemente, and assurances that it *will readily [*43 be held with any person not liable to the same or like objection.

The application of Mr. de Forest, to be accredited as consul-general of the United Provinces of South America, was first made in May last; his credential was a letter from the supreme director of Buenos Ayres, Pueyrredon, announcing his appointment by virtue of articles concluded, in the names of the United States of America, and of the United Provinces of Rio de la Plata, between persons authorized by him, and W. G. D. Worthington, as agent of this government, who neither had, nor indeed pretended to have, any power to negotiate such articles. Mr. de Forest was informed, and requested to make known to the supreme director, that Mr. Worthington had no authority whatsoever, to negotiate on the part of the United States any article to be obligatory on them, and had never pretended to possess any full power to that effect. That any communication interesting to the supreme director, or to the people of Buenos Ayres, would readily be held with Mr. de Forest, but that the recognition of him as a consul-general from the United Provinces of South America, could not be granted, either upon the stipulation of supposed articles, which were a nullity, or upon the commission, or credential letter of the supreme director, without recognising thereby the authority from which it emanated, as a sovereign and independent power.

With this determination, Mr. de Forest then declared himself entirely satisfied. But shortly after the commencement of the present session of congress, he renewed his solicitations, by the note dated the 9th of December, to be accredited as the consul-

general of the United Provinces of South America, founding his claim on the credentials from his government, which had been laid before the president last May.

A conversation was shortly afterwards held with him, by direction of the president, in which the reasons were fully explained to him upon which the formal acknowledgment of the government of Buenos Ayres, for the present, was not deemed expedient. They were also, at his request, generally stated in the note dated 31st of December.

*44] It has not been thought necessary on the part of this government, *to pursue the correspondence with Mr. de Forest any further; particularly, as he declares himself unauthorized to agitate or discuss the question with regard to the recognition of Buenos Ayres as an independent nation. Some observations, however, may be proper, with reference to circumstances alleged by him, arguing that a consul-general may be accredited, without acknowledging the independence of the government from which he has his appointment. The consul of the United States, who has resided at Buenos Ayres, had no other credential than his commission. It implied no recognition by the United States of any particular government; and it was issued before the Buenos Ayres declaration of independence, and while all the acts of the authorities there, were in the name of the king of Spain.

During the period while this government declined to receive Mr. Onis, as the minister of Spain, no consul received an *exequatur* under a commission from the same authority. The Spanish consuls, who had been received before the contest for the government of Spain had arisen, were suffered to continue the exercise of their functions, for which no new recognition was necessary. A similar remark may be made with regard to the inequality alleged by Mr. de Forest, to result from the admission of Spanish consuls, officially to protect before our tribunals the rights of Spanish subjects generally, while he is not admitted to the same privileges, with regard to those of the citizens of Buenos Ayres. The equality of rights to which the two parties to a civil war are entitled in their relations with neutral powers, does not extend to the rights enjoyed by one of them, by virtue of treaty stipulations contracted before the war; neither can it extend to rights, the enjoyment of which essentially depends upon the issue of the war. That Spain is a sovereign and independent power, is not contested by Buenos Ayres, and is recognised by the United States, who are bound by treaty to receive her consuls. Mr. de Forest's credential letter, asks that he may be received by virtue of a stipulation in supposed articles concluded by Mr. Worthington, but which he was not authorized to make; so that the reception of Mr. de Forest, upon the cre-

*45] dential on which he founds his claim, would imply *a recognition, not only of the government of the supreme director, Pueyrredon, but a compact as binding upon the United States, which is a mere nullity.

Consuls are, indeed, received by the government of the United States, from acknowledged sovereign powers, with whom they have no treaty. But the *exequatur* for a consul-general can obviously not be granted, without recognising the authority from whom his appointment proceeds as sovereign. "The consul," says Vattel (book 2, chap. 2, § 24), "is not a public minister; but as he is charged with a commission from his sovereign, and received in that quality, by him where he resides, he should enjoy, to a certain extent, the protection of the law of nations."

If, from this state of things, the inhabitants of Buenos Ayres cannot enjoy the advantage of being officially represented before the courts of the United States, by a consul, while the subjects of Spain are entitled to that privilege, it is an inequality resulting from the nature of the contest in which they are engaged, and not from any denial of their rights, as parties to a civil war. The recognition of them, as such, and the consequent admission of their vessels into the ports of the United States, operates with an inequality against the other party to that contest, and in their favor.

It was stated in conversation to Mr. de Forest, and afterwards in the note of the 31st of December, that it would be desirable to the United States, to understand whether Buenos Ayres itself claims an entire, or only an imperfect independence. That the necessity of an explanation upon this point arose from the fact, that in the

negotiation of the supposed article with Mr. Worthington, the supreme director had declined contracting the engagement, though with the offer of reciprocity, that the United States should enjoy at Buenos Ayres the advantages and privileges of the most favored nation. That the reasons given by him for refusing such an engagement was, that Spain having claims of sovereignty over Buenos Ayres, the right must be reserved, of granting special favors to her, for renouncing them, which other nations, having no such claims to renounce, could not justly expect to obtain. Without discussing *the correctness of this principle, it was observed, the United States, in acknowledging Buenos Ayres as independent, would expect either to be treated on the [*46 footing of the most favored nation, or to know the extent and character of the benefits which were to be allowed to others, and denied to them; and that while an indefinite power should be reserved, of granting to any nation advantages to be withheld from the United States, an acknowledgment of independence must be considered premature.

Mr. de Forest answers, that this reservation must appear to every one contrary to the inclination, as well as interest of the government of Buenos Ayres; that it must have been only a proposition of a temporary nature, not extending to the acknowledgment by the United States of the independence of South America, which he is confident would have rendered any such reservations altogether unnecessary, in the opinion of the government of Buenos Ayres, who must have seen they were treating with an unauthorized person, and suggested the idea, from an opinion of its good policy; and, he adds, that Portugal is acknowledged by the United States as an independent power, although their commerce is taxed higher in the ports of Brazil than that of Great Britain.

It had not been intended to suggest to Mr. de Forest, that it was in any manner incompatible with the independence or sovereignty of a nation, to grant commercial advantages to one foreign state, and to withhold them from another. If any such advantage is granted for an equivalent, other nations can have no right to claim its enjoyment, even though entitled to be treated as the most favored nations, unless by the reciprocal grant of the same equivalent. Neither had it been intended to say, that a nation forfeited its character of acknowledged sovereignty, even by granting, without equivalent, commercial advantages to one foreign power, and withholding them from another. However absurd and unjust the policy of a nation granting to one, and refusing to another, such gratuitous concessions, might be deemed, the question, whether they affected its independence or not, would rest on the concessions themselves. The idea meant to be conveyed was, that the reservation of an indefinite *right to grant hereafter special favors to Spain, for the renunciation of her [*47 claims of sovereignty, left it uncertain whether the independence of Buenos Ayres would be complete or imperfect, and it was suggested, with a view to give the opportunity to the supreme director of explaining his intention in this respect, and to intimate to him, that while such an indefinite right was reserved, an acknowledgment of independence must be considered as premature. This caution was thought the more necessary, inasmuch as it was known, that at the same time, while the supreme director was insisting on this reservation, a mediation between Spain and her colonies had been solicited by Spain, and agreed to by the five principal powers of Europe, the basis of which was understood to be a compromise between the Spanish claim to sovereignty, and the colonial claim to independence.

Mr. de Forest was understood to have said, that the congress at Tucuman had determined to offer a grant of special privileges to the nation which should be the first to acknowledge the independence of Buenos Ayres. He stated in his notes, that he knew nothing of any such resolution by that congress, but that it was a prevailing opinion at Buenos Ayres, and his own opinion also, that such special privileges would be granted to the first recognising power, if demanded. It has invariably been avowed by the government of the United States, that they would neither ask nor accept of any special privilege or advantage for their acknowledgment of South American independence; but it appears, that the supreme director of Buenos Ayres, far from being prepared to grant special favors to the United States for taking the lead in the acknowl-

edgment, declined even a reciprocal stipulation, that they should enjoy the same advantages as other nations. Nor was this reservation, as Mr. de Forest supposes, defeasible, by the acknowledgment, on the part of the United States, of South American independence. The supreme director could not be ignorant, that it was impossible for this government to ratify the articles prepared by his authortiy with Mr. Worthington, and yet to withhold the acknowledgment of independence. He knew, that if that
*48] instrument should be ratified, the United *States must thereby necessarily be the first to grant the acknowledgment, yet he declined inserting in it an article, securing to each party, in the ports of the other, the advantages of the most favored nation. It is, nevertheless, in conformity to one of those same articles, that Mr. de Forest claimed to be received in the formal character of consul-general.

With regard to the irregularities and excesses committed by armed vessels, sailing under the flag of Buenos Ayres, complained of in the note of the 1st of January, it was not expected, that Mr. de Forest would have the power of restraining them, otherwise than by representing them to the supreme director, in whom the authority to apply the proper remedy is supposed to be vested. The admission of Mr. de Forest, in the character of consul-general, would give him no additional means of suppressing the evil. Its principal aggravation arises from the circumstance, that the cruisers of Buenos Ayres are almost, if not quite, universally manned and officered by foreigners, having no permanent connection with that country, or interest in its cause. But the complaint was not confined to the misconduct of the cruisers. It was stated, that blank commissions for privateers, their commanders and officers, had been transmitted to this country, with the blanks left to be filled up here, for fitting out, arming and equipping them, for purposes prohibited by the laws of the United States, and in violation of the law of nations. It was observed, that this practice, being alike irreconcilable with the rights and the obligations of the United States, it was expected by the president, that being made known to the supreme director, no instance of it would again occur hereafter. No reply to this part of the note has been made by Mr. de Forest, for it is not supposed, that he meant to disclaim all responsibility of himself, or of the government of Buenos Ayres, concerning it, unless his character of consul-general should be recognised. As he states that he has transmitted a copy of the note itself to Buenos Ayres, the expectation may be indulged, that the exclusive sovereign authority of the United States, within their own jurisdiction, will hereafter be respected. All which is respectfully submitted.

Department of State, January 28, 1819. JOHN QUINCY ADAMS.

*49] *Correspondence with Mr. Clemente.

No. 1. Lino de Clemente to the Secretary of State.

Most Excellent Sir:—Having been appointed by the government of the republic of Venezuela, its representative near the United States of North America, I have the honor to inform you of my arrival in this city, for the purpose of discharging the trust committed to me: to effect this, I have to request, that you will please to inform me at what time it will be convenient for you to afford me an opportunity of presenting my respects to you personally; and of communicating to you the object of my arrival in the federal city. I avail myself of this occasion to tender you the assurance of the high consideration and respect, with which, I am, &c.

LINO DE CLEMENTE.

Washington, Dec. 11, 1818—8th year of the Republic.

The Honorable John Q. Adams.

No. 2. The Secretary of State to Don L. de Clemente.

Department of State, Washington, December 16, 1818.

Sir:—Your note of the 11th inst. has been laid before the president of the United States, by whose direction I have to inform you, that your name having been avowedly

affixed to a paper drawn up within the United States, purporting to be a commission to a foreign officer, for undertaking and executing an expedition in violation of the laws of the United States, and also to another paper avowing that act, and otherwise insulting to this government, which papers have been transmitted to congress, by the message of the president, of the 25th of March last, I am not authorized to confer with you, and that no further communication will be received from you at this department.

I am, &c. J. Q. Adams.

Correspondence with Mr. de Forest.

No. 5. Mr. de Forest to the Secretary of State.

I have the honor to announce to Mr. Adams, that I have again arrived in this district, in order to renew my solicitations *to be accredited by this government as the consul-general of the United Provinces of South America, founding my [*50 claim on the credentials from my government, in the month of May last.

The information recently acquired by this government, respecting the provinces of South America, I presume, has established the fact beyond doubt, that Buenos Ayres, their capital, and a large portion of their territory, are, and have been, free and independent of the government of Spain, for more than eight years ; and possess ample ability to support their independence in future. That a regular system of government is established by their inhabitants, who show themselves, by the wisdom of their institutions, sufficiently enlightened for self-government; and that they look up to this great republic as a model, and as to their elder sister, from whose sympathies and friendship, they hope and expect ordinary protection at least.

The messages of the president of the United States, as well the last as the present year, have created a general belief, that the United States have placed us on an equal footing with Spain, as it respects our commercial operations ; but, Sir, it is found not to be the case. A consul of Spain is known and respected as such by your tribunals of justice, which enables him, *ex officio*, to protect and defend the interests of his countrymen. Whereas, the verbal permission I have to act in the duties of my office, will not avail in your tribunals; and a number of instances have already occurred, where the property of my absent fellow-citizens has been jeopardized, for want of a legally authorized protector. The case of the Spanish schooner ———, a prize to our armed vessels Buenos Ayres and Tucuman, which was brought into Scituate, some time since, by her mutinous crew, after having murdered the captain and mate, by throwing them overboard, is a striking instance of the necessity of there being resident here an accredited agent, to superintend the commercial concerns of South America; and without such accredited agent, our citizens cannot be considered as completely protected in their rights.

I request you, Sir, to lay this communication before the president of the United States, as early as may be convenient, and to assure him, that I duly appreciate the friendly reception I *met with from his government, on my arrival in this [*51 country; and that, as circumstances have since materially altered, I have no doubt but I shall receive his permission to act, in the accustomed form. While I remain, with the highest consideration and respect, Sir, your most obedient servant.

Georgetown, Dec. 9. D. C. de Forest.

The Honorable John Q. Adams, Secretary of State.

No. 6. Mr. de Forest to the Secretary of State.

I took the liberty, on the 9th inst. of addressing a note to Mr. Secretary Adams requesting to be accredited as the consul-general of the United Provinces of South America; and have now the honor of informing Mr. Adams that I have lately received an official communication from the government of Buenos Ayres, directing me to inform the government of this country, that the supposed conspiracy against the person of the supreme director, proves to have originated with an obscure and disap-

pointed individual; who, to gain adherents, pretended to be connected with people of the first respectability and influence, several of whom he named, but who have convinced the government that they had no knowledge whatever of his base project. The supreme director, anxious to do away any unfavorable impressions which the report of such an affair might cause at this distance, has ordered me to assure the president of he United States, that the government of South America was never more firmly supported, nor its prospects more brilliant, than at the present time. I have the honor, &c. (Signed) DAVID C. DE FOREST.

Georgetown, December 12, 1818.

No. 7. Mr. Adams to Mr. de Forest.

Mr. Adams presents his compliments to Mr. de Forest, and has the honor of assuring him, by direction of the president of the United States, of the continued interest
*52] that he takes in the welfare and prosperity of the provinces of La Plata, and of *his disposition to recognise the independent government of Buenos Ayres, as soon as the time shall have arrived when that step may be taken with advantage to the interests of South America, as well as of the United States.

In the meantime, he regrets an *exequatur* to Mr. de Forest, as consul-general of the United Provinces of South America, cannot be issued, for reasons stated in part by the president, in his message to congress, at the commencement of the present session; and further explained to Mr. de Forest by Mr. Adams, in the conversation which he has had the honor of holding with him. Mr. de Forest must have seen, that any privileges which may be attached to the consular character, cannot avail in the judicial tribunals of this country, to influence in any manner the administration of justice; and with regard to the schooner brought into Scituate, such measures have been taken, and will be taken, by the authorities of the United States, as are warranted by the circumstances of the case, and by the existing laws.

With respect to the acknowledgment of the government of Buenos Ayres, it has been suggested to Mr. de Forest, that, when adopted, it will be merely the recognition of a fact, without pronouncing or implying an opinion with regard to the extent of the territory or provinces under their authority, and particularly without being understood to decide upon their claim to control over the Banda Oriental, Santa Fe, Paraguay, or any other provinces disclaiming their supremacy or dominion. It was also observed, that in acknowledging that government as independent, it would be necessary for the United States to understand, whether Buenos Ayres claims itself an entire or only an imperfect independence. From certain transactions between persons authorized by the supreme director and an agent of the United States (though unauthorized by their government), after the declaration of independence by the congress at Tucuman, and within the last year, it appears, that the supreme director declined contracting the engagement, that the United States should hereafter enjoy at Buenos Ayres the advantages and privileges of the most favored nation, although with the offer of a reciprocal
*53] stipulation on the part of the United *States. The reason assigned by the supreme director was, that Spain, having claims to the sovereignty of Buenos Ayres, special privileges and advantages might ultimately be granted to the Spanish nation, as a consideration for the renunciation of those claims. It is desirable, that it should be submitted to the consideration of the government of Buenos Ayres, whether, while such a power is reserved, their independence is complete; and how far other powers can rely, that the authority of Spain might not be eventually restored. It has been stated by Mr. de Forest, that the congress at Tucuman had passed a resolution to offer special advantages to the nation which should first acknowledge their independence, upon which the question was proposed, whether such a resolution, if carried into effect, would not be rather a transfer of dependence from one nation to another, than the establishment of independence? rather to purchase support than to obtain recognition? The United States have no intention of exacting favors of Buenos Ayres for the acknowledgment of its independence; but in acknowledging it, they will expect

either to enjoy, in their intercourse with it, the same privileges and advantages as other foreign nations, or to know precisely the extent and character of the benefits which are to be allowed to others, and denied to them. It should, indeed, be known to the supreme director, that, while such an indefinite power is reserved of granting to any nation, advantages to be withheld from the United States, an acknowledgment of independence must be considered premature.

In adverting to these principles, it was observed to Mr. de Forest, that their importance could not but be peculiarly felt by the United States, as having been invariably and conspicuously exemplified in their own practice, both in relation to the country whose colony they had been, and to that which was the first to acknowledge their independence. In the words of their declaration, issued on the 4th of July 1776, they resolved thenceforth "to hold the British nation, as they hold the rest of mankind, enemies in war, in peace friends;" and in the treaty of amity and commerce, concluded on the 6th of February 1778, between the United States and France, being the first acknowledgment by a foreign power of the independence of *the United States, and the first treaty to which they were a party, the preamble declares, that the [*54
king of France and the United States, "willing to fix, in an equitable and permanent manner, the rules which ought to be followed relative to the correspondence and commerce which the two parties desire to establish between their respective countries, states and subjects, have judged that the said end could not be better obtained, than by taking for the basis of their agreement the most perfect equality and reciprocity, and by carefully avoiding all those burdensome preferences, which are usually sources of debate, embarrasment and discontent; by leaving also each party at liberty to make, respecting commerce and navigation, those interior regulations which it shall find most convenient to itself; and by founding the advantage of commerce solely upon reciprocal utility, and the just rules of free intercourse; reserving withal to each party the liberty of admitting, at its pleasure, other nations to a participation of the same advantage."

In the second article of the same treaty, it was also stipulated, that neither the United States nor France should thenceforth grant any particular favor to other nations, in respect of commerce and navigation, which should not immediately become common to the other nations, freely, if the concession was free, or for the same compensation, if conditional.

In answer to Mr. de Forest's note of the 12th instant, Mr. Adams has the honor of assuring him, that the president has received with much satisfaction the information contained in it; and will derive great pleasure from every event which shall contribute to the stability and honor of the government of Buenos Ayres. Mr. Adams requests Mr. de Forest to accept the assurance of his distinguished consideration.

Washington, Dec. 31, 1818.

No. 8. Mr. Adams to Mr. de Forest.

Mr. Adams presents his compliments to Mr. de Forest, and in reference to the case of the schooner brought into Scituate, mentioned in Mr. de Forest's communication of the 9th inst., as well as to several others which have occurred of a similar character, requests him to have the goodness to impress upon the *government of Buenos Ayres, the necessity of taking measures to repress the excesses and irregulari- [*55
ties committed by many armed vessels, sailing under their flag, and bearing their commissions. The government of the United States have reason to believe that many of these vessels have been fitted out, armed, equipped and manned in the ports of the United States, and in direct violation of their laws.

Of the persons composing the prize-crew of the vessel at Scituate, and now in confinement upon charges of murder and piracy, it is understood, that three are British subjects, and one a citizen of the United States. It is known, that commissions for private armed vessels, to be fitted out, armed and manned in this country, have been sent from Buenos Ayres to the United States, with the names of the vessels, commanders and officers, in blank, to be filled up here, and have been offered to the avidity

of speculators, stimulated more by the thirst for plunder, than by any regard for the South American cause.

Of such vessels, it is obvious, that neither the captains, officers nor crews can have any permanent connection with Buenos Ayres, and from the characters of those who alone could be induced to engage in such enterprises, there is too much reason to expect acts of atrocity, such as those alleged against the persons implicated in the case of the vessel at Scituate.

The president wishes to believe that this practice has been without the privity of the government of Buenos Ayres, and he wishes their attention may be drawn to the sentiment, that it is incompatible both with the rights and obligations of the United States—with their rights, as an offensive exercise of sovereign authority by foreigners, within their jurisdiction, and without their consent—with their obligations, as involving a violation of the neutrality which they have invariably avowed, and which it is their determination to maintain. The president expects, from the friendly disposition manifested by the supreme director towards the United States, that no instance of this cause of complaint will hereafter be given.

Mr. Adams requests Mr. de Forest to accept the renewed assurance of his distinguished consideration.

Washington, Jan. 1, 1819.

*56] *No. 9.

Sir:—It is not my intention to give any unnecessary trouble to the department of state; but having had the honor of receiving two notes from Mr. Secretary Adams, on the 4th instant, dated December 31st, and January 1st, some explanation appears to be necessary.

In the first place, I do not suppose "that any privileges which may be attached to the consular character, can avail in the judicial tribunals of this country, to influence, in any manner, the administration of justice." But I suppose, that a consul, duly accredited, is *ex officio*, the legal representative of his fellow-citizens, not otherwise represented by an express power: and that the tribunals of justice do, and will, admit the legality of such representation. Mr. Adams has misunderstood me, in another observation, which was in substance, that there was a general opinion prevailing at Buenos Ayres, that the power first recognising our independence, would expect some extraordinary privilege or advantage therefor; and that, in my opinion, the government of Buenos Ayres would readily grant it, if demanded. I know nothing, however, of any resolution having been passed on this subject by the congress at Tucuman.

It appears, from the relation of a fact in Mr. Adams's note of the 31st ultimo, that the government of Buenos Ayres had intimated a desire (in the course of a negotiation with an agent of the United States) to reserve the right of granting more extraordinary privileges to Spain, on the settlement of a general peace, which must appear to every one contrary to their inclination, as well as interest; and it can be accounted for only by supposing that the proposition of the United States agent was merely of a temporary nature, and did not extend to an acknowledgment, by the United States, of the independence of South America; which act, I am confident, would have rendered any such reservation altogether unnecessary, in the opinion of the government of Buenos Ayres, who must have seen that they were treating with an unauthorized person, and must have thought it good policy, at this time, to suggest such an idea. Indeed, were the government of Buenos Ayres to pursue that course, *they might plead the *57] example of a neighboring power, acknowledged to be independent by the United States; and its chief, both illustrious and legitimate. It is well known, that the government of Brazil taxes the commerce of the United States about thirty per cent. higher than that of Great Britain. It may be, that Great Britain is entitled to this preference, on account of important services rendered by her to the king of Portugal; and permit me to ask you, sir, what services could be rendered to any nation already in existence, so great as would be the acknowledgment by Great Britain, or by the United States, of

the independence of South America? Such recognition, merely, by either of these powers, would probably have the immediate effect of putting an end to the cruel and destructive war, now raging between Spain and South America, and crown with never-fading laurels the nation thus first using its influence in favor of an oppressed, but high-minded people.

The account given by Mr. Adams, in his note of the 1st instant, respecting the irregular conduct of vessels sailing under the Buenos Ayres flag, has caused me much mortification, and has already been transmitted to my government, by the Plattsburgh; as also a copy of Mr. Adams's frank and friendly communication of the 31st ultimo. The supreme director will certainly be desirous to adopt the most prompt and efficacious measures within his power, to remedy the evils complained of. But pray, sir, what can he do more than has already been done? The government of Buenos Ayres have established the most just rules and regulations for the government of their vessels of war, as well as of commerce; and have sent me to this country, invested with the title and powers of their consul-general; as well as to guard against any breach of those rules and regulations, by their citizens and vessels frequenting these seas, and the ports of these United States, as to protect them in their rights: but, sir, without a recognition of my powers, on the part of the government, I can have no right whatever to question any individual on the subject of his conduct; nor can any responsibility attach to me, nor to my government, *during such a state of things, for irregularities committed. [*58

A considerable number of our seamen are foreigners by birth, who have voluntarily entered our service; therefore, it is not a matter of surprise, that, of the mutineers of the prize crew of the vessel at Scituate, three should have been born Englishmen, and one a North American. It is, however, an absolute fact, to which I am personally knowing, that the captors of that prize (the Buenos Ayres and Tucuman privateers), were legally fitted out at Buenos Ayres, early in the last year, from which port they sailed on a cruise off Cadiz; and it will afford the government of South America much satisfaction, to learn that the United States will prosecute those mutineers, and punish such as are found guilty of crimes, according to the laws.

Before I close this note, I beg leave to make a few observations, in answer to one of the reasons for not accrediting me, given by Mr. Adams, by direction of the president of the United States, in a conversation which I have had the honor of holding with him, viz: "That the act of accrediting me as consul-general, would be tantamount to the formal acknowledgment of the independence of the government which sent me." I do not profess to be skilled in the law of nations, nor of diplomacy, nor would I doubt the correctness of any opinion expressed by the president, for whose person and character I have entertained the most profound respect; yet, I must say, that I cannot understand the difference between the sending of a consular agent, duly authorized, to Buenos Ayres, where one was accredited from this country, four or five years ago, and has continued ever since in the exercise of the duties of his office, and the reception of a similar agent here. I also beg leave to mention, that I was in this country, soon after the arrival of the present minister of Spain, the Chevalier de Onis; and recollect to have heard it observed, that being a political agent, he was not accredited, because the sovereignty of Spain was in dispute; but that the consuls, who acknowledged the same government (one of the claimants to the sovereignty, and the one actually in possession of it), were allowed to exercise their functions. *If this was the case at that time, the government of the United States must have then had a different opinion on this subject, from what it now has. Mr. Adams will please to bear in mind, that I have only solicited to be accredited as a consular agent, having never agitated the question of an acknowlegment of our independence as a nation, which most certainly is anxiously desired by the government and people of South America, but which being a political question, I have never asked. [*59

Mr. Adams will also be pleased to accept the renewed assurances of my most distinguished consideration and respect. (Signed) DAVID C. DE FOREST.

Georgetown, January 8, 1819.

No. 10.

The Supreme Director of the United Provinces of La Plata, to his Excellency, the President of the United States of North America.

Most Excellent Sir:—The supreme government of these provinces have long exerted their zealous efforts to establish the closest and most amicable relations with the United States of America, to which the most obvious interests seem mutually to invite them. This desirable object has hitherto been frustrated, by the events of the times; but the moment appears at length to have arrived, which presents to the people of these provinces, the flattering prospect of seeing their ardent wishes accomplished. In consideration of these circumstances, and in conformity with the 23d of the articles agreed upon with citizen William G. D. Worthington, the agent of your government in these provinces, I have nominated citizen David C. de Forest, their consul-general to the United States, with the powers specified in his commission and instructions, respectively. I therefore request your excellency, to grant him the attention and consideration, which in the like case will be afforded to the public agents of your excellency resident in these regions.

I avail myself of this renewed occasion of reiterating to your excellency, assurances of the sentiments of respect and consideration, with which I have the honor to be, your excellency's most obedient and most humble servant,

(Signed) JN. MN. DE PUEYRREDON.

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