

MAYFIELD TO BEE.^a

DEPARTMENT OF STATE
City of Austin 20th April 1841.

SIR

The undersigned Secretary of State of the Republic of Texas has the honor to acknowledge the receipt of your dispatch of the 7th of March last,^b which together with yours of the 25th^c of January have been submitted to the President for his determination thereon. For the reasons suggested by you, it was deemed advisable to defer the further discussion of the subject of our Indian relations, and the matters connected with that question until the new administration of the United States came into office. That event having occurred the President wishes you immediately to call the attention of the Government of the United States again to that subject. By reference to the discussions that have at various periods been held relative to the Treaty of 1831 with Mexico,^d it will be seen that the United States Government, has uniformly when her interest was involved assumed the position, that that Treaty in all its parts was binding and obligatory upon the Republic of Texas. Without questioning the rules of international law, which could admit of such an interpretation of the Treaty, this Government acquiesced in the position assumed; and in 1838 by a proclamation of the President the provisions of the 5th and 6th Articles of that treaty were declared in force and have been observed by the authorities of this country to the great detriment of our revenue.

Under the Construction given by Mr. Forsyth to the 33rd article of that Treaty Texas would not be receiving an equivalent, for the sacrifices she suffers in her revenues; by allowing Vessels belonging to the United States to enter our Ports free of Tonnage duty. To arrive at a fair interpretation of that instrument the whole should be construed by its several parts and articles, by which means its true spirit and intention may be more accurately defined. It will be found that concessions, and privileges are contained in many of its clauses and provisions in many of its articles of which there cannot be found a sufficient guarantee or equivalent secured in the same article. This naturally arose from the relative strength, commerce, and political condition of the contracting parties at the time of making the Treaty, as will be seen by reference to the articles cited.

The United States at the time had an extended commerce, and heavy Shipping. Mexico on the contrary (and with but remote prospects of improvement) was limited in her commerce, and yet more in

^a See Records of Department of State (Texas), Book 38, p. 178-181.

^b Amory to Mayfield, of the date given. See Part I, pp. 481-484.

^c The 26th; the dispatch is Bee to Lipscomb of this date.

^d See *Treaties and Conventions of the United States*, etc., 664-675.

her shipping. The mutual guarantee then as to tonnage and other charges enumerated in the "5th and 6th" articles of the Treaty cannot be said to secure to Mexico an equivalent, as it was apparent and must for years continue that the whole trade of Mexico with the United States upon the Gulf would be carried in American bottoms.

Again the United States was established in all the Departments of the Government. Union and harmony prevailed throughout the whole, with a large standing Army, and an Organized Militia, and overflowing Treasury. Mexico on the other hand, was cut up into political parties, distracted in her Military Strength and organization. She evidently sought to secure to herself an equivalent in the 33rd Article of the Treaty for the advantages obtained for the American shipping interest in the 5th and 6th articles of the same. Independent of those considerations, the United States was bound upon principles of Justice aside from any treaty stipulations upon the subject, to guard the Government of Mexico, her citizens, or territory from hostilities or incursions from those various tribes of Indians, which by her policy she was establishing on the immediate borders of the latter. Taking this view of the subject, which it is believed is the just one, supported by the relative military and political position of the contracting parties, as well the natural and political obligations reciprocally resting upon both parties, it is difficult to conceive how the words of that instrument can admit of the construction given by Mr Forsyth, or in what respect the Executive of the United States is wanting "the legal power to check or restrain by force the voluntary and peaceable Migrations of Indians" etc.

The 33rd article imposes several distinct obligations, and embraces as many distinct stipulations. It is first agreed "that the two contracting parties, shall by all the means in their power maintain peace and harmony among the several Indian Nations who inhabit the land adjacent to the lines and rivers which form the boundaries of the two countries." This first stipulation, of itself implies too plainly to be misunderstood, the exercise of Military force, should it become necessary to answer the objects contemplated, "peace and harmony among the several Indian Nations who inhabit etc" by all the means in their power which become unnecessary words unless force for the accomplishment of the end sought could be resorted to.

The next clause of the Article however it is believed leaves no room for a doubt, or obstacle in the interpretation or just understanding and intention of the two contracting parties relative to the obligations reciprocally imposed by that article; for as will be seen it is farther stipulated "The better to attain the objects of maintaining peace and harmony etc" both parties bind themselves expressly to restrain by force all hostilities and incursions, on the part of the Indian Nations living within their respective boundaries. Here then is an

reciprocity and correspondence in her political and commercial relations, deems it advisable that the necessary preparatory measures should be adopted to put a termination if binding at all to the stipulations of the treaty so far as relates to commerce and Navigation. This line of policy becomes the more imperative since the Government of the United States evades as it is believed the plain and obvious obligations pointed out in the 33rd article of the Treaty. In the opening of Spring we may again expect predatory bands of Indians from the United States, to prevent which this Government is not advised that the Government of the United States have taken any precautionary measures.

Persuasions have hitherto had but little influence over the Indians residing on our borders. Besides under the present system, our revenue is materially crippled, and our duties placed upon a basis highly detrimental to the public interest. In view of all the circumstances I am directed by the President, to instruct you, to formally notify the Government of the United States; of the intention of this Government to terminate the stipulations of the Treaty so far as relates to "Commerce and Navigation". This notification you will give in Conformity to the 34th article of the Treaty, confining your attention to the objects therein specified.

The President approves of the correspondence you have opened with the Chevalier d'Argaiz Envoy extraordinary and Minister Plenipotentiary of her Catholic Majesty the Queen of Spain;^a and desires that you will keep the Government informed of the nature, and spirit with which the propositions have been received, by the Government of Spain independent of the considerations urged in your communications to the Chevalier d'Argaiz. Texas would become an active Competitor in furnishing to Spain, and Cuba, many of those articles of import which are now monopolized by other quarters of the Globe.

You will receive as soon as the disposition of her Catholic Majesty is ascertained detailed instructions to guide you in a negotiation alike important to the Commerce of Texas and Spain. In the mean time you will endeavour to obtain the earliest information consistent with the relations you bear to the Chevalier d'Argaiz.

Herewith you will receive the petition of Doctr Robertson of this City relative to the capture of his Negroes. It is believed that the stipulations of the 33rd article of the Treaty will cover this case; as by the laws of Mexico Slavery was not tolerated. This subject you will call the attention of the United States to, and urge the propriety of taking efficient measures for the restoration of the slaves mentioned. It will be seen from the multiplicity of cases accruing, giving rise to the mutual interpretation of both Governments that the Government of the United States will not longer delay entering into a negotiation

^a See Amory to Secretary of State, March 7, 1841, Part I, p. 481-484.

defining by express treaty stipulations the commercial and political relations of the Two Governments; more particularly when the Treaty alluded to it is subject to such doubts, and interpretations as seem to have been placed upon it.

We have received advices from Gen Hamilton to the 3rd March.^a Judge Webb has sailed for Mexico, and we anticipate that he will receive a favorable reception, and [that there will be] a speedy termination of our difficulties with Mexico. The President will convene Congress about the middle of June; which fact you will communicate as speedily as possible to Gen Hamilton.

I have the honor to be with sentiments of regard,

Very Respectfully

Your Obt Servant

J S MAYFIELD

To

Col BARNARD E BEE

MAYFIELD TO AMORY.^b

DEPARTMENT OF STATE

Austin April 24th 1841

SIR

Intelligence reached us to day of the melancholy event to the United States in the death of Gen. William Henry Harrison late President of that Government. In honor to his Memory, and to the Government over which he presided as Chief Magistrate only for the brief period of one Month, until death relieved him of his cares, our flag is flying at half mast, and salute Guns are firing every thirty minutes, until sunset. Col Bee's letter of April 6th to Judge Burnet^c mentions his intentions of visiting the South until the extra session. In the mean time the President directs that you will seduouly urge upon the Government of the United States the necessity of immediately opening the negotiation for a treaty. This Department is not yet notified that the attention of the Government of the United States has been called to the Subject. If it is concluded on the part of that Government to open the negotiation at Washington it is important that this Department should be speedily informed thereof, in order that the necessary instructions should be forwarded to the Legation at Washington City.

The reasons that have hitherto been furnished you, together with the reasons connected with the difficulties attending a due understanding of the stipulations of the treaty, will it is hoped, together

^a See Hamilton's letter of that date in the Correspondence with France.

^b See Records of Department of State (Texas), Book 38, p. 181-182.

^c This letter has not been found.

with such arguments as may naturally be suggested to your mind, enable you to induce the Government of the United States to enter at once upon the negotiation, whereby it is believed our relations can be more satisfactorily determined, and upon principles of entire reciprocity.

In your intercourse with the Secretary of State, you may find it more advantageous, and better calculated to facilitate a determination of the question to seek as often as possible a personal interview, and discuss the question verbally with Mr Webster, taking care always to reduce to writing the substance of the conversation held at such interviews.

The difficulty of answering or replying to any objections that may be taken, and of discussing the details of any given question by written communications, renders the discussion prolix and tedious; and in this matter it is becoming a question of no inconsiderable importance not only to the agricultural and commercial interest of this country, but particularly so, as far as relates to our revenue, and the Indians on our borders.

These remarks are thrown out as hints; as the manner of conducting the discussion of this question must be determined by you. It is desirable that you should not fail to communicate the earliest information of the conclusion of the Government of the United States on this Subject.

I am Dear Sir, with sentiments of esteem,
Your, Obt. Servant

J. S. MAYFIELD.

To NATHANL AMORY
Secretary of Legations Washington City.

SECRETARY OF STATE OF THE UNITED STATES [WEBSTER] TO EVE.^a

ROBERTS TO BEE.^b

DEPARTMENT OF STATE
City of Austin June 21st 1841.

SIR

Soon after assuming the duties of Acting Secretary of State several communications from Mr Amory of the 12th, 14th, 19th, 23rd and 30th April^c were received from Mr Mayfield who was then at Houston and who stated in his letter accompanying them, that he had "answered them" but omitted to send to the Department a

^a June 15, 1841. See Eve to Waples, February 27, 1843, in Correspondence with the United States.

^b See Records of Department of State (Texas), Book 38, p. 192-195.

^c That of the 12th was from Bee. For all, see Part I, pp. 484-494.

copy of his reply, having accidentally left it at Galveston. Presuming that Mr Mayfield's reply to your several Communications was full upon every point, on which you wished for information or instructions, I do not consider it necessary to do more than acknowledge their receipt.

More recently Mr Amory's communication of the 20th May,^a has been received. The formal announcement to the Government of the United States contained in that letter, of the resolutions of this Government to terminate the Treaty of the 5th April 1831, between the United States and Mexico, so far as it is binding upon the United States and Texas, in all matters relating to Commerce and Navigation, as soon after the date of said communication as is compatible with the provisions of the 34th article of said Treaty, renders it highly important that a substitute should be provided at as early a day as possible. It seems quite evident from what has fallen from Mr Webster in the personal interviews you and Mr Amory have had with him, that he will not consent that the treaty should be made here. It will therefore be of vast importance to us to know distinctly, as far as you can ascertain by conversations with Mr Webster, or otherwise, which, or how many of the principal features we wish to incorporate in the Treaty, they will make most difficulty in granting and what will probably go without question. There seems to be three distinct and separate heads or branches, under the one or the other of which, every topic that will probably enter into the contemplated treaty will be naturally considered. Viz: 1st. The free Navigation of the border rivers, The Sabine and Red Rivers to the Sea, 2nd Our Indian Relations, 3rd Our Commercial and Maritime relations on the high Seas.

This Department is not informed, whether the Government of the United States will contest the first point or not, but as it is one of great and growing importance to a very large and wealthy portion of our citizens, it should no longer be permitted to remain in doubt. In a similar case in the early history of the United States, the position which that Government took is well known, one of the very first questions which was raised after the close of their Revolutionary war with Spain, was upon the subject of the Navigation of the Mississippi. The position then assumed by all the Diplomatic Agents of the United States, who had occasion to touch upon this subject, was their "natural right to the free Navigation of the Mississippi to its entrance in to the sea."^b The Congress too on several occasions, asserted their claim in strong and emphatic language. One resolution particularly may be mentioned. On the 16th Sept 1788 the United States in Congress assembled, Resolved "That The free Navigation of the Mississippi is a clear and essential right of the

^a See Part I, p. 494-496.

^b Cf. *American State Papers, Foreign Relations*, I, 251-263, *passim*.

United States, and that the same ought to be considered and supported as such". And in the resolution which followed, a stop was actually put to the negotiations with Spain and the whole matter referred to Congress, because of the unwavering pertinacity with which Spain Clung to her claim of the exclusive right to the use of that river.

The conduct pursued by the United States throughout that controversy, is a matter of history to be found in all their public records. And as their claim there was founded in reason and supported by strong and unanswerable arguments, it is presumed its reasonableness, will not now be denied.

The position which the United States then occupied towards Spain, we now occupy towards her *precisely*, as far as the Navigation of the Red river is concerned. As regards the free Navigation of the Sabine, the question is a little varied; but not it is thought materially. The United States own to the Western bank below the 31° ^a N latitude, above that the River is entirely our own, so that our claim is stronger in this case than in the former. In fact the bare supposition that our right to the free navigation of the Sabine will be questioned, seems a violent one, and the only object to be attained in introducing it into the Treaty is to shut up the door against all future doubt. I have not been able to ascertain whether the right of this country to the free navigation of the red River has ever yet been formally called in question by the Government of the United States; but murmurs and complaints from among our own citizens begin to be frequent of seizures and detentions of Texan produce by the authorities of the United States above and below Natchitoches. Our settlements on the upper part of the Red River renders it necessary that this matter should be definitely settled, at the very earliest possible date. The right to the free navigation of this River ought never to be abandoned. The Mode only of exercising it should be specified in the Treaty.

In regard to our Indian relations, it would be difficult it seems to me, to place them upon a fairer or more equitable footing than the one they already occupy in the 33rd article of the Treaty between the United States and Mexico, which Treaty both Texas and the United States have tacitly acknowledged to be mutually binding. A little more precision might perhaps be given to certain expressions in it, if there be any reasonable doubt as to their true meaning, a doubt which however, I have never entertained myself. In this I perceive I differ with Mr Mayfield who thinks that the word "incursions" as used in the Treaty means "peaceable" as well as "warlike" incursions—an interpretation which I think is Contradicted by the Context. I do not conceive however that it matters much which is the true interpretation. The Treaty will expire in May next at any rate,

^a Properly 32° .

and before that time it is hoped a new one will be formed. The mutual obligations of the two Governments to restrain their Indians from making war or committing depredations upon the citizens and property of their neighbors, is to my mind a natural one. It follows of course from their claims of sovereignty. The Indians residing within the limits of the United States, and under their avowed jurisdiction, are, so far as all foreign powers are concerned, "Citizens" of that Country, and no nation will be permitted to enquire into, or intermeddle with, the manner in which they are governed, and that every government is bound to restrain their Citizens from making war on a friendly power, needs only to be asserted to be universally accorded. The Same reasoning is of course equally applicable to this Government. If this principal be acquiesced in by the United States, there can be no serious difficulty in the way in pointing out in what manner restraints shall be exercised. When Indians are at peace with the power, within whose limits they reside, and make war upon the other contracting power, it ought to be the bounden duty of the former, to send such a Military force against such Indians, as will be sufficient to disarm them, and to capture the principal offenders, who should be given up for punishment to the aggrieved party. And if such Indians are pensionaries of the power within whose limits they reside, their pensions ought for a limited period to be cut off, and remuneration made for the damages done by said Indians. But if any tribe or tribes of Indians are first at war with the power within whose limits they reside, and afterwards make war or hostile incursions upon the territory of the other contracting party, all that either party could in justice require of the other, would be the sending of such a Military force against them as the protection of their own territory and Citizens would demand, without being held responsible for any property taken off or destroyed by the Indians. One other point only presents itself on this subject Viz: the obligation on the part of the United States to remove such of their Indians from our territory as have emigrated from theirs.

We may well insist that this duty on their part is clear and unquestionable so far as relates to all such Indians as have come into our territory since our separation from Mexico, as well as to those who came here prior to that period without the sanction or permission of the Supreme power of Mexico and this upon such obvious principles that it is not thought necessary [to] enumerate them. But that there is another obligation on the part of the United States to remove such as came here by permission of the Mexican Authorities, anterior to the date of our declaration of Independence, and while we were yet of course an integral part of the Mexican Confederacy, may well be doubted; and by the last administration of the United States I recollect, was expressly denied. How far the present

administration will be willing to go, will be for you to ascertain, which may best be done, at personal interviews with the Secretary of State.

There seems no necessity of specifying by name, what tribes of Indians are meant to be included in the Treaty. The principle once settled, will embrace *all* residing in the respective limits of the two Governments.

As regards the Third principal point, little need be said about it in this letter, which is intended rather to direct your attention to the particular subjects to be considered in the contemplated Treaty, than to instruct you conclusively and finally on them. This could not be done at all, without risking an inconsistency in the instruction given by this Department, until a copy of Mr Mayfield's last communication to you is obtained,^a and ought not to be done until this Department is better informed of the views intertained by the government of the United States on some of the most important points. Entire reciprocity is all that either government ought to, and I presume does expect. What amounts to reciprocity has been so long, and so well settled by numerous Commercial Treaties between different nations, that there are few or no principles left in doubt.

It seems but fair that as the United States are to have all the benefit of treating at home, where they can have frequent reference to the proper Departments for information and instruction; that we should be entitled to something like an equivalent. It is proposed therefore, that the Government of the United States, after being fully advised of the principal points which this government desires to settle by the Treaty, submit a sketch of such a Treaty as they are willing to make to you as the representative of this government. The only advantage we could expect to derive from their compliance with this proposition, would be, that it would save much time, as the fewer points there are left in dispute, the less time will be required to settle them. We offer, provided they will consent to make the Treaty at Austin, to do what we require of them.

It is hoped that as soon after the receipt of this letter as possible, you will give this Department all the information you may be able to obtain upon the different subjects presented, as well as the answer of the United States Government to the last proposition.

In whatever this letter may conflict with Mr Mayfield's last communication to you from Galveston, this must yield, and his will be your instructions, the reasons for this is obvious to you.

The Santa Fé expedition took up the line of march from the encampment on Brushy, distant about twenty miles, on the morning of the 20th Inst. The Military under Command of Brevet Brigadier

^a Mayfield's last communication on the subject seems to have been from Galveston (see the first paragraph of this letter), but it has not been found.

General Hugh McLeod, consists of five companies mounted infantry and one of Artillery. A caravan of Merchants with goods suited to the market drawn in waggons accompanies the expedition under the protection of the Government. The instructions given by this Department to the Commissioners are to the effect. That they are to endeavour to prevail upon the people of New Mexico residing within our limits, to submit quietly and peaceably to an incorporation with us, and to acknowledge our right of Jurisdiction to the fullest extent. This being accomplished our revenue laws are to be put in force at once and a small Military force kept up there for the purpose of repelling any sudden attack of the Mexicans or Indians.^a A Commissioner is also appointed to reside at Santa Fé as the representative or agent of this Government, with special instructions for his guide.^b No further alterations are contemplated either in their laws or form of Government, than are absolutely necessary, from the alteration in their affairs, by a change of their allegiance. It is expected that a part of the expedition will return to this City as early as the 15th of Novr. next, and will probably bring delegates to our Congress.

I neglected to mention above one other subject which it would be well to sound the United States Government upon. I mean the granting by each government to the Citizens of the other a free introduction of a limited number of slaves when taken as servants, for the purpose of attending on their masters or owners, and not for hire or sale. This is a delicate topic and will therefore require very nice management. You must exercise your own Judgment in ascertaining what effect the introduction of such a feature into the Treaty, would have upon it in the Senate. It would not do to hazard the whole Treaty for the accomplishment of an object comparatively insignificant. I only call your attention to this, as I have to the other topics embraced in this letter, reserving more particular instructions, for Mr Mayfield on his return to the Seat of Government.

I have the honor to be
Very Respectfully
Your Obt Servt.

SAML. A ROBERTS
Acting Secy of State.

TO HON BARNARD E BEE.
Washington.

^a For the instructions, see Roberts to Cooke and others, June 15, 1841, in Correspondence with Mexico.
^b See Roberts to Cooke, June 15, 1841, in the Correspondence with Mexico.

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