

ROBERTS TO BEE.<sup>a</sup>

DEPARTMENT OF STATE

*July 8th 1841.*

SIR:

Since my last letter to you, Mr Amory's favor of the 12th ult. has been received to which no particular reply is necessary. We are anxiously expecting further advices from you upon the subject of the contemplated Treaty. The President is extremely anxious to have that business closed before the meeting of Congress if possible, and at any rate before the expiration of his term of office. A Treaty upon a basis of strict reciprocity cannot be a bad one, and with no other guide you might confidently proceed to the discussion of the different articles. The protracted absence of Mr Mayfield has prevented any more specific instructions than the hints contained in my Communication of the 21st June last.

I have reason to believe that some of the original drafts of our earliest public papers were taken on to Washington City, and are now on file in some of the Departments there, probably the war [Department]. The journal for several days of the proceedings of the Convention, The original Constitution etc. are all missing

These papers if there, will doubtless be given up with pleasure by the Government of the United States. The mode of making the application, can be best judged of by you. Your particular attention is called to it as a matter of interest in the future history of this Country.

I enclose a communication for Genl. Hamilton<sup>b</sup> which I wish forwarded by first safe opportunity. The letters and the papers accompanying it are left unsealed that you may first read them. They will fully advise you of all that has transpired up to this time. When I wrote last night to Gen H. I thought I should accompany Genl Lamar to Galveston. I think now it will not be necessary. Genl Lamar will go down alone, and either he or Judge Webb will inform Gen Hamilton of all that will be necessary for him to know.

I have the honor to be with high regard

Your Obt Servt

SAML. A ROBERTS

*Acting Secy of State.*

The Hon  
BARNARD E BEE

<sup>a</sup> See Records of Department of State (Texas), Book 38, p. 196-197.

<sup>b</sup> Roberts to Hamilton, July 5, 1841. See Correspondence with Great Britain.

ROBERTS TO EVE.<sup>a</sup>

DEPARTMENT OF STATE  
*City of Austin August 11th 1841.*

SIR.

I had the honor of receiving this morning your letter from Galveston of the 31st Ult. addressed to the Secretary of State, with the papers mentioned to be enclosed in it.<sup>b</sup>

Unfortunately our Mail arrangement is such as to leave but one entire day between its arrival and departure, which usually renders it impossible to do any more than to acknowledge by the return of the post, the receipt of any communication of the important character which yours possesses.

It will however be immediately laid before the President, and I flatter myself, that such order will be taken respecting the subject of your request, as will prove satisfactory to you.

I avail myself of this occasion to tender you assurances of my distinguished consideration,

SAML. A. ROBERTS  
*Acting Secy of State*

Hon JOSEPH EVE  
*Chargé d'affaires of the  
 United States.*

ROBERTS TO EVE.<sup>c</sup>

DEPARTMENT OF STATE  
*Austin August 17th 1841.*

SIR:

Your communication of the 31st ult, the receipt of which was acknowledged in my note to you of the 11th Inst. has been submitted to the President and I have his instructions to make the following reply.

Among the papers accompany[ing] that communication is a certified copy of an indictment "found by one of the Criminal Courts for the State of Louisiana" against one Moro Philips for stealing two negro Slaves in the said State of Louisiana, and who, it is alledged, has "fled with them to the Republic of Texas".

In a subsequent part of your communication you say—"In the absence of a Treaty stipulation with the two Governments, upon the subject of fugitives from justice, I am aware that the surrender of Philips cannot be claimed as a matter of right. It has however been understood and believed in the United States that the Government

<sup>a</sup> See Records of Department of State (Texas), Book 38, p. 197.

<sup>b</sup> For the letter and enclosures, see Part I, pp. 504-506.

<sup>c</sup> See Records of Department of State (Texas), Book 38, p. 198.

of Texas, from feelings of comity which exist between the two Republic's, would not be disinclined to surrender to the proper authorities fugitives from justice from the United States," and that you are "therefore instructed by the Government of the United States to request through you (me) that the Government of Texas surrender the said Moro Philips to the proper authorities of Louisiana." Whatever may be the "feelings" which this Government entertains on this Subject, the avowal of the accredited agent of the United States on a recent occasion, when making a similar demand of this Government, "that the Executive of the United States is not empowered to deliver Criminals to foreign Governments in the absence of Treaty stipulations to that effect"<sup>a</sup> would of itself be amply sufficient to justify the President in refusing to comply with your request even if his constitutional right to do so, was clear and unquestionable; for it surely cannot be expected of one nation, to exercise an act of international courtesy, when it is distinctly informed beforehand that the same act, under similar circumstances would not be reciprocated. I do not mean now to intimate, what course this Government would have pursued if the case had been differently presented. I know of no public act or declaration on the part of this Government, which authorizes the inference that it (the Government) would not be disinclined to surrender to the proper authorities, "fugitives from justice from the United States" nor indeed do I understand you as deducing your inference from any such authority. If I am mistaken in this you will correct me. But even then the President would feel himself clearly absolved from any obligation he might otherwise have felt himself under, by the official avowal of the policy as above quoted, which the Executive of the United States would pursue in like cases towards this Government.

In no view of the case does the President then feel that he is called on to deliver to the United State, Moro Philips, who, it is alledged, is a fugitive from justice; and I am therefore instructed by the President to inform you that he declines, for the reasons above given, complying with your request.

It affords me much pleasure Sir, to furnish you with a copy of the Treaty between this Government and France, as you request. It is sent with this Communication.

I avail myself of this occasion to renew to you assurances of my high regard and consideration.

SAML A ROBERTS  
*Acting Secy of State.*

Hon JOSEPH EVE  
*Chargé d'affaires. U. S. A.*

<sup>a</sup> See Flood to Burnet, February 12, 1841, Part I, pp. 478-479.

ROBERTS TO BEE.<sup>a</sup>

DEPARTMENT OF STATE  
*Austin 7th Sept 1841.*

SIR:

Your communication of the 31st July was received by the last Mail, and with it, a copy of your note to Mr Webster on the subject of the contemplated treaty with the United States.<sup>b</sup> A short time previous to this, yours of the 13th July to this Department<sup>c</sup> also came safely to hand. In this last you mention that you are entitled to a reply from Mr Webster to your note of the 19th May relative to Indian encroachments.<sup>d</sup> This subject is becoming a very interesting one to the people of this country, and it is earnestly hoped, that you will receive a speedy and satisfactory reply from the Government of the United States. Doctor Robertson whose negroes, you will recollect, were taken by the Indians, and were subsequently found to be held by persons residing within the territory of the United States (the evidence of which was furnished to you from this Department on the 20th April) has already gone to great expense in the pursuit of his property; and has been damaged, by the loss of time etc. to an amount, that even a prompt restitution of his property could not repay. But if it is delayed much longer, the chances of finding the negroes again will be very much diminished, and their value greatly lessened by the idle and dissolute<sup>e</sup> habits which negroes so readily contract from a long residence with savages. It is particularly desirable therefore, that this subject should not be permitted to slumber, but that you should press as earnestly as would be becoming, for an answer.

Mr Webster's reply to your communication of the 13th<sup>e</sup> April remonstrating against the violation of our territory by a deputy Marshall (Ferguson) of the state of Arkansas, a copy of which was enclosed in your despatch of the 13th July, if not altogether satisfactory, is at least all that we could reasonably demand under the peculiar circumstances of the case. It is of the less importance in a National point of view, as the like cannot well happen again. The boundary line is completed, and the officers of neither Government can hereafter plead ignorance upon this point.

From your communication of the 31st July, I learn with regret that Mr Webster will probably adhere to his first resolution as to the place of negotiating the Contemplated Treaty. The press of business in his Department and the heavy demands upon his time

<sup>a</sup> See Records of Department of State (Texas), Book 38, p. 199-202.

<sup>b</sup> For both, see Part I, p. 506-513. The note to Webster was dated July 27.

<sup>c</sup> See Part I, pp. 499-501.

<sup>d</sup> The note was written by Amory. For an extract see Part I, p. 496; for the remainder, Part I, Calendar.

<sup>e</sup> This should be the 12th. See Part I, pp. 484-485.

will not permit him to give the subject that constant attention which we so much desire; and I much fear the negotiations will be protracted beyond the constitutional term of the present administration. Nothing remains however, but to use all diligence in urging it forward in Washington with all possible despatch.

Your note of the 27th July to Mr Webster, has been carefully read by the President and receives his approval. You were not mistaken in supposing that this Government would claim the right of *entrepôt*; or of transshipping their produce from some point on the Mississippi, free of all charges except the ordinary ones of Storage, wharfage etc. when the produce is to be sent to a foreign country for sale or traffic. What point the Government of the United States may think proper to assign to us for this purpose is not very material (though an eye should certainly be had to its convenience) The *principle* is what we are most concerned about. In my communication to you of the 21st June,<sup>a</sup> I did not it is true, mention this as one of the principal heads of the contemplated Treaty. I regarded it, as you have rightly conjectured, as *included* in our claim of the right of *free navigation* of the Red River to its entrance into the sea, and it is so essential to a full exercise of that right, that it is difficult to conceive how it could be supposed to *exist* without. It would in fact be manifestly absurd, to concede to us the right of *free navigation*, and in the very same instrument assert the right of taxing us upon the transshipment of our produce into vessels calculated for the sea; which, from the unfitness of the river craft for the navigation of the ocean, would always have to be done. It involves an absurdity of terms, for how can that navigation be said to be *free*, when we are compelled at some point to pay the duties exacted by the impost laws for all goods introduced into the country? There can be no need of a Treaty to secure the right to us (I mean the right of importing into the United States all of our produce upon paying the duties thereupon) for we already enjoy it, in common with all Nations who are on friendly terms with the United States. Nor do I conceive that it ought to make any difference whether we employ as our carriers, Texan or American bottoms or bottoms of a third power. You recognize none I perceive in your communication to Mr Webster, though in your letter to this Department, you make a distinction between American bottoms and our own

If the United States have it in contemplation as you seem to intimate, to deny to this country the right of *entrepôt*, they, would be much more likely to do so, if it was believed by them that we were to be our own carriers, while the prospect of opening a new channel to the enterprise and industry of American Ship owners could not

<sup>a</sup> In this series of *addenda*.

fail to operate as an inducement with that Government to grant our demands. I do not apprehend therefore that you will find any difficulty in negotiating for the right to tranship in American bottoms, if they concede to us the right to tranship in our own. As concerns bottoms of third parties, it is more a subject of Treaty between the United States and such parties than between us. You will however be authorized and expected to see that nothing enters into the Treaty on this subject, which would be injurious to the interests of our citizens.

Until the receipt of your last communication I did not apprehend much difficulty in settling with the United States the free navigation of the border Rivers to the Sea. That is the last nation that ought to question that right, for no other has taken such strong ground in favor of the principle, or been more consistent in maintaining it. In addition to the references I have already cited you to in proof of this, you have but to turn to her diplomatic correspondence to find volumes to the same effect; Besides This I do not think you will find it difficult to establish that it is now the settled law of nations as recognized by most, if not all the leading powers of Europe, *That navigable Rivers are public highways*, when they rise in one country and empty into the sea, in another, so far at least, as the country in which they rise is concerned. I well recollect reading in a Newspaper a case of this kind, which was settled some two or three years ago, in some of the European Governments, (I have forgotten which) nor have I as you know such books as would assist my memory; but this I well recollect, that the *principle* was said to be extended beyond the rule laid down at the Congress of Vienna. Should it be necessary you will probably be able to find the authority last alluded to in the libraries of some of the Legations in Washington.

This question is one of vast importance to us, and I have therefore devoted a large share of my letter to it. It remains now, only to instruct you concerning the conclusions to which the President has come after a mature consideration of the subject in all its bearings.

He directs then, that unless the United States concede to us the right of freely navigating the border Rivers, and of transhiping whatever we may have for export, free of all tariff and impost duties, and the right of landing and storing our produce when vessels are not in readiness to take it off, by paying the customary charges for wharfage, storage etc. that you be instructed to enter into no Treaty at all upon *this* subject. It is one upon which this Government can make no compromise without inflicting a lasting injury upon that portion of our inhabitants residing on or near the border Rivers; and at the same time jeopardizing a great national right, the enforcement of which, as soon as its importance is felt, and the principles upon which it rests are understood, will be demanded by every

voice of the Nation. We had best therefore, meet the question at once. No Government ever can, without the loss of National honor, stand by and see her citizens stripped of a "right", which, to quote the language of the Congress of the United States on a case precisely similar, is "*clear and essential*" and one that would be weak enough to allow it, could never be sustained by a free people. We have as little doubt of our right, as the United States had of theirs when contending with Spain, for the free navigation of the Mississippi.

In all your intercourse therefore with Mr Webster, whenever the navigation of the border Rivers is the subject, you will always represent the *free navigation* and the *right of entrepôt* as a *Sine qua non*. If both of these points are not conceded, you will not be authorized to consent to any arrangement concerning the navigation of the Red River particularly (for the Sabine stands on a different footing) by which by the remotest implication, there is any abandonment of the *principle* we have set out with.

If it is found to be impossible to incorporate our demands on this head in the Treaty; then that entire branch of the subject must be left open, and your attention will be turned to the points mentioned in my former communications, and your note to Mr Webster of the 27th July.

If we are balked in so essential a feature of the Treaty as the free navigation of the border Rivers, it will be difficult to make any Treaty which will be satisfactory to this nation. Under these circumstances therefore, too long a period for its duration ought not to be fixed upon. The navigation question must come up again and that before very long; when it will be desirable to have the subject open for discussion. Perhaps the United States, would consent in the treaty (in case you do not come to some understanding now) to leave this particular subject open for discussion at an early period. I only suggest this, leaving it to your discretion whether you will avail yourself of it, or not.

Your omission to say anything to Mr Webster on the subject of introducing slaves from one Country to the Other, when travelling with their owners, as servants, is perhaps, upon the whole well. There cannot however be any objection to ascertaining the views of the Government of the United States upon this subject, which may be best done in personal interviews. If that Government seems much averse to such a stipulation, you ought not to hesitate to abandon it; but if it is a matter of indifference, with them, the opportunity ought not to be lost of securing a privilege, the want of which is so serious an inconvenience to the citizens of both countries.

I have not complied with your request to "draw out in full form such a convention as our Government is desirous of intering into," for the reason that it would be almost a miracle if such an one would

not be so changed and altered in various ways before it could be made entirely acceptable to the United States, that it could hardly be recognized as the one furnished by the Government; besides this it rarely happens that your first demands are all acceded to. You must then fall to a second and frequently to a third. If the Government should furnish a project of a convention, it would of course, embody its first demands on every point, and if not accepted in that shape, which it would not often be, it would be of little use beyond supplying a form, for which of course you do not feel at any loss.

I enclose as you request a copy of the Treaty with France. This, with those you already have, will be excellent guides in many particulars.

A separate commission to make the Treaty is also enclosed. I knew the necessity of this; and soon after coming into office, made some enquiry about it, and was left under the impression that full powers for this purpose had been conferred upon you.

I think now you are well informed on all the points of a material character that we desire to arrange with the United States. There are of course minor ones, such as enter into all treaties, that have not, been dwelt upon. They are referred to your judgment and discretion.

I cannot close this communication without mentioning the anxiety of the President to accomplish this negotiation with the United States so as to lay it before the Congress at its meeting in November, or at least, before his term of office expires.

I have the honor to be  
Your Obt Servt

SAML. A ROBERTS  
*Secretary of State*

HON BARNARD E BEE  
*Chargé d'Affaires*  
*etc. etc. etc.*

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HOUSTON TO EVE.<sup>a</sup>

EXECUTIVE DEPARTMENT,  
*City of Houston, 30th, July, 1842.*

HON. JOSEPH EVE.

SIR—Your note of the 27th instant, relative to the Brig "Retrieve", reached me at a moment when it was not possible for me to reply.<sup>b</sup>

I regret that any difficulty should have arisen as to the cruise. So soon as it is possible to look into the matter it shall be done; and whenever the government is able to do so, all just remuneration will be made to the captain and owners. To what extent will be proper, I am unable to determine.

<sup>a</sup> See Records of Department of State (Texas), Book 40, p. 135.

<sup>b</sup> This probably refers to the letter of Eve to Waples of the given date (See Part I, pp. 572-573). If there was a separate letter to Houston, it has not been found.



To day I directed the Acting Secretary of State to write to you upon the subject, so far as facts are in his knowledge, at the same time to assure you that at this time the country has not means to meet the demand, if it should be found just and right to do so when it is able.

With perfect respect,

I have the honor to be your obt. servt.,

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HOUSTON TO ROMAN.<sup>a</sup>

SAM HOUSTON, in the name and by the authority of the Republic of Texas, to His Excellency A. B. ROMAN, *Governor of the State of Louisiana*, of the United States of America: Greeting:

By virtue of a communication received from E. W. Moore, Esquire, Commanding the Texas Navy, under date of the 7th. instant, I am placed in possession of a correspondence between your Excellency and himself, relative to certain individuals, refugees from justice, who are charged as mutineers on board the schooner San Antonio, a Texian vessel of war, and as murderers of one of the officers of said vessel during the month of February last, then in the Port of New Orleans.

The names of the individuals are Seymour Oswald, T. D. Shepherd, J. Allen, William Barrington, James Hudgeons, William Simpson, Edward Keener, Benjamin Pompilly and Edward Williams, who are now held as prisoners in the State of Louisiana.

Your Excellency is hereby requested (and a respectful demand is made) to deliver to Commodore E. W. Moore the above named men, and all who may be implicated in order that they may be dealt with in accordance with the laws which they are charged to have so grossly violated.

Given under my hand and the Great Seal of the Republic, at the City of Houston, the 12th. day of September, A. D. 1842,  
L. S. and of the independence of the Republic the seventh.

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HOUSTON TO ROMAN.<sup>b</sup>

SAM HOUSTON, *President of the Republic of Texas*,

To His Excellency, A. B. ROMAN, *Governor of the State of Louisiana*, one of the United States of America:  
Greeting:

Whereas the government of the Republic of Texas, hath received due and authentic information, through the despatches of Commodore

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<sup>a</sup> See Records of Department of State (Texas), Book 40, p. 144.

<sup>b</sup> *Ibid.*, p. 155-156.

E. W. Moore, commanding Texas Navy, under date of the 14th. instant, that a certain individual, named Antonio Landoit, is at present a prisoner in the State of Louisiana aforesaid:

And whereas, also, the said Antonio Landoit stands charged with having committed the crime of mutiny on board the Schooner San Antonio, a Texian vessel of war, at the time lying in the port of New Orleans; and also as a murderer of some of the officers of said vessel, and who is now a refugee from justice:

Therefore, a request (and respectful demand) is hereby made upon His Excellency, the Governor of the said State, for the person of the said Antonio Landoit, to be delivered over to Commodore E. W. Moore, commanding as aforesaid, to be dealt with as the laws which he is charged to have so grossly violated may prescribe.

In testimony whereof, I hereunto set my hand and affix the great seal of the Republic. Done at Washington, the 29th. day  
L. s. of October, in the year 1842, and of the independence of the Republic the seventh.