

(Copy of communication addressed to Mr. Archer.)

WASHINGTON CITY

10th. Jan'y 1843

HON WM. S ARCHER

Chairman of the Committee on Foreign Relations.

SIR: With your permission I beg leave to submit a few brief remarks upon some of the various points embraced in the treaty lately concluded in this City between the United States and the Republic of Texas.

The Republic of Texas, having on the 19th day of May A D 1841, made known to the United States her intention to terminate the treaty of the 5th. of April A D 1831,^a between Mexico and the United States, so far, as the provisions of the same, relating to commerce and navigation were binding upon the Texian Government, consequently by the provisions of the 34th. article of said treaty, since the 19th. day of May A. D. 1842, all regulations upon the subjects of commerce and navigation have ceased between the United States and Texas.

The contiguity and juxtaposition of the two nations—the frequent intercourse between their citizens, and the growing commerce carried on between them, render it essentially necessary, in order to avoid all difficulties and embarrassments, which might arise, as well as to perpetuate and strengthen the good feelings of friendship and national concord, which it is the interest and should be the desire of both Governments to foster and preserve, that definitive rules, in the nature of treaty stipulations, should be established for their mutual regulation and government.

Assuming then, that a treaty is not only proper but necessary, the next inquiry arises; what should be its provisions? In order that it may receive the sanction of the people of the two countries, and ensure a faithful observance of its conditions, and thereby accomplish the objects designed, it should be founded upon the basis of reciprocal utility and perfect equality. I am aware that in the negotiations of commercial treaties, superior facilities and advantages are always enjoyed by those who *treat at home*—this, taken in connection with the fact that the Republic of Texas is yet in her infancy, with a limited population and her resources but partially developed, it might be supposed that she would necessarily be compelled to make concessions without receiving an equivalent. But such a view I apprehend will not be found correct, it being neither compatible with the known independence of the people of Texas, nor the long established magnanimity of policy, which has characterized the Government of the United States. By assuming that the basis, of the negotiations, between the two countries, as before remarked should be

^a See *United States Treaties and Conventions*, 664-675; *United States Statutes at Large*, VIII, 410-429.

founded upon the broad and liberal principles of independence, equal favors and reciprocity, all the incentives and all the opportunities, for over-reaching and double-dealing are thereby discarded and thrown aside. Neither Government should ask any thing, which the other can have any interest to deny. Neither should offer any thing, for which the other may be unwilling to give a fair equivalent.

I will now compare the treaty which has been concluded,^a with the foregoing principles and see how far (should it be ratified) they will coincide.

The first article provides for a lasting peace and friendship.

The second article stipulates for a reciprocal liberty of commerce: that, "the inhabitants of the two countries respectively shall have liberty to come with their ships and cargoes to all such places ports and rivers in the territories of the two countries, to which other foreigners are permitted to come, to enter into the same, and remain and reside in any ports of the said territories respectively, also to hire and occupy houses, and ware houses, for the purposes of their commerce, but subject always to the laws of the two countries respectively." This although entirely reciprocal in its character will be found in its effects to be more extensive in its benefits to the Government of the United States than to Texas. From the relative situation of the two countries—their great inequality of surplus capital, population, manufactures and commerce, a greater number of United States' ships, merchants and capitalists will always be found engaged in the trade and shipping of Texas, than of Texian ships, merchants etc in that of the United States. This is an advantage, which the United States may enjoy without any detriment to Texas, while such a provision by the encouragement and protection mutually guaranteed by it to the commerce of both nations, is well calculated to strengthen the ties of friendship already existing between them. The last provision of this article, withholding the coasting trade of either country, being in the nature of a reservation and not a cession, need not be noticed here.

The 1st. provision of article 3rd. places the articles of growth produce or manufacture of either country in the markets of the other upon an equal footing with like articles imported from any other foreign nation. This provision, though in the nature of a mutual concession, possesses a prohibitory or negative character much to be desired by the United States. Texas is thereby prevented from concluding any arrangement with any other foreign power (that might be desirous of monopolizing her trade), by which the articles of growth produce or manufacture of such foreign power might be admitted into Texas, on more favorable terms than like articles, the growth produce or manufacture of the United States, thereby

^a See Part I, pp. 622-623.

guaranteeing to the United States a fair competition with other foreign powers in the trade of Texas, which trade must prove highly lucrative to those who shall be so fortunate as to secure it.

The next paragraph of the same article provides that, "no higher or other duties or charges shall be imposed in any of the ports of the United States on Texian vessels, than those payable in the same ports by vessels of the United States; nor in the ports of Texas on vessels of the United States, than shall be payable in the same ports on Texian vessels." This though apparently equal will be found in its effects to give to the United States great advantages, while it may materially affect the revenues of Texas. The number of Texian vessels is remarkably limited and their tonnage generally light, the consequent charges upon them in the ports of the United States, which would be lessened by this provision, must be trivial in amount. On the other hand nearly the whole of the Texian shipments from the United States, being made in United States' bottoms, (which with other foreign vessels are charged in the ports of Texas sixty cents per ton on sail and thirty cents per ton on steam vessels and the tonnage duty thus collected from foreign vessels amounting as will be seen by reference to the collectors' returns of the different ports of Texas to near one fifteenth of the whole revenue received,) should Texas with a view to encourage and foster her own shipping (which has been the policy of every Government desiring to be independent) make the same difference in the tonnage duty between domestic and foreign vessels, as has been established by the United States, for the protection of their shipping, then the gain to the United States by the adoption of this provision must be in proportion, as the amount of their shipping entering the ports of Texas, exceeds the shipping of Texas entering the ports of the United States.

The 3rd. and 4th. paragraphs, of the 3rd. article provide that the same duties shall be collected by either country on the articles of growth produce or manufacture of the other, whether the same shall be imported into either country by Texian vessels or vessels of the United States. This provision will have the effect to reduce the duties now levied in the ports of Texas five per cent, upon such articles as are imported into that country in vessels of the United States, which are the growth produce or manufacture of the United States. This will be more fully explained by the following clause extracted from the impost laws of Texas, "An additional duty of five per cent ad valorem shall be collected over and above that which the laws otherwise direct from all goods imported in foreign bottoms, with the exception of those foreign vessels, which by treaty or act of Congress are permitted to enter on the payment of domestic duty". Such a provision may likewise be contained in the revenue laws of the United States, this however I have not had an opportunity to

ascertain: should it even be so, this provision must still result with greater advantage to the United States, in proportion to the amount which their exportations to Texas in United States vessels exceed the exportations of Texas to the United States in Texian vessels, which excess as has already been shown is very great in favour of the United States.

The last paragraph of the 3rd. article, relates to drawbacks upon the exportation of goods the growth produce or manufacture of either country, and when reexported from either country in the vessel of the other party to any foreign nation, the party from whose country such reexportation is made, reserves to itself the right, of regulating or diminishing the amount of the said drawback. This provision though important for the future, at present would be very limited in its effects upon either country. It is not probable that any exportation will be made to Texas from the United States, for some time to come with a view of reexportation by *river* or *sea* to any other foreign nation. The only case, in which this provision will probably operate, will be in the exportation of the products of Texas to the United States, and from thence to be reexported to Europe. By the adoption of this provision the United States will have the power to diminish the drawbacks allowed to such an extent (when the re-exportations are made in Texian vessels) as may amount to a prohibition, and thereby secure to themselves the carrying trade of all articles the growth, produce or manufacture of Texas so reexported.

By article the 4th. "the two contracting parties agree that the Sabine from its source to the sea, the Red river and all rivers, having their sources or origin in the territory of Texas, running in part of their course through that territory, or forming the boundary between Texas and the United States and emptying into the Mississippi, and the Mississippi itself, from and including the mouth or mouths of said rivers to the sea, shall be free to be navigated and common to both nations, and that no duty shall be levied or collected upon any articles the growth, produce or manufacture of Texas, originally transported down the above named rivers, or transported for the purpose of descent and exportation to any port or places situated thereon, provided however, that it shall be lawful for the Presidents of the United States to establish such rules and regulations, as may be necessary, for the proper observance of the stipulations contained in this, and the next succeeding article." In this article the right of entrepot is indirectly ceded to Texas, but as the same is more fully couched in article 5th. I will pass it over for the present, and confine myself to the remaining stipulations of the article above set forth.

The privilege, of the navigation of the several streams before alluded to (which take their rise in Texas) throughout their whole course to the sea, cannot be considered as a cession on the part of the

United States to Texas, but *is a natural right belonging to Texas*. This position I presume no one will attempt to controvert: should it however be doubted, the doctrine heretofore held by the United States, during the controversy with Spain in 1792 in regard to the right of navigating the Mississippi within the Spanish territory,^a as well as the doctrine afterwards held by the United States, in the controversy with Great Britain in relation to the navigation of the St Lawrence, which both takes its rise and empties into the sea within the British territory,^b will establish the principle upon which this right is founded. This right is rested upon the principle, that the Ocean is free to all men, and its rivers to all their inhabitants—that whenever these rivers enter the limits of another nation, from that in which they take their rise, or through which they flow, if the right, of the upper inhabitants to descend the stream, shall be in any wise obstructed or denied, it is but an act of force by a stronger society against a weaker condemned by the judgment of mankind. It is also a principle that the right to a thing gives the right to the means without which it could not be used, that is, the means follow the end, and the right to navigate a river draws to it a right to moor vessels to its shores—to land on them in cases of distress, or for other necessary purposes. This principle is founded in natural reason and evidenced by the common sense of mankind. Mr Jefferson, in his instructions to the United States' Minister in Spain, in 1792, contended that this incidental right extended even beyond the shores, when circumstances render it necessary to the exercise of the principal right. The only modification which this right admits of, is when its free use would conflict with the safety and convenience of the nation through which the upper inhabitants are to pass. Hence arises the power to establish rules for its government and exercise. But then it is a right as *real* as any other right however well defined, and should it be refused or so shackled, by regulations, not necessary for the peace and safety of the lower inhabitants, as to render its use impracticable, it would be an injury for which the party injured should be entitled to redress. The law of nature, in its great outlines, though sufficiently understood, does not always reach the minuter and more complicated details necessarily called for by the various wants of commerce and navigation: for this reason, the ocean itself has been subjected in many instances, by numerous treaties, to various regulations. The power to prescribe these rules has been delegated by this article of the treaty to the President of the United States. The free navigation of the streams before alluded to, as now contended for, will possess none of the difficulties suggested—the exercise, of this right so far from endangering the peace and safety of the inhabitants of the United States, situated and residing upon

^a See *American State Papers*, Foreign Relations, I, 251-263, *passim*.
^b Cf. Woolsey, *International Law*, 82.

these streams below where they emerge from the territory of Texas, would on the contrary greatly promote their interest and contribute to their wealth.

By article 5th. the two contracting parties agree that on all articles the growth produce or manufacture of either country, sent from one country to the other by land, river or sea and exported to a foreign country no duties or charges shall be required to be paid to the power within and from out of whose limits such articles arrive and depart: that they may be repacked for exportation, under the inspection of the proper authorities, and at the expense of the party interested, and that raw cotton the produce of either country may be imported into other free of duty for five years, from the exchange of the ratifications of this treaty." This article in a commercial point of view may be considered as perhaps the most important embraced in the treaty. In order to understand the advantages—the policy—the fairness and equality of its provisions, it is necessary to examine and compare its probable effects, upon the various interests of the two countries. The geographical position of Texas—the habits and pursuits of her people—her principal population being at present embraced between 28 and 34 degrees of north latitude and her soil being well adapted to the production of the great southern staple, mark her's as emphatically an agricultural country. The only articles which she may expect to export will be her agricultural products: the great item of which, and perhaps the only one to any extent for the present will be the article of raw cotton. Texas then, by the provisions of article 5th, would secure to herself the privilege of discharging and repacking for re-exportation, under the inspection of the proper authorities, at the ordinary expense attendant upon the same, her cotton destined for European markets, and the additional privilege of disposing of the same for the term of five years within the limits of the United States free of duty. A large portion of the citizens of Texas having emigrated from the United States—the habits, language and religion of the two countries being the same, and the institutions of the former having been derived from the latter, it is but natural to suppose, that the people of Texas should prefer and desire to carry on their principal trade with the citizens of the United States, when they can do so, without material detriment to their commercial interest. The limited amount of her shipping, and consequent limited means of conveyance within herself render it the interest of Texas to procure a market for her products as near home as possible, and thereby obtain a speedy return for these products, and a ready supply of such articles as she may desire to purchase abroad, and import into her own country for consumption. This object may be said to be attained in a great degree for the next five years, by the provisions of this article of the treaty, after which

the privilege of selling Texian cotton in the markets of the United States free of duty would expire by its own limitation without a notice of a desire to terminate it by either party. The right of entrepot and repackage ceded by this article would result with much convenience to the people of Texas, so long as their principal trade shall be confined to the United States, especially that portion of our citizens residing in eastern Texas, whose outlet to market must be through the channels of the various rivers alluded to in article 4th: their natural right being confined as before stated, to the privilege of free navigation without that of entrepot and repackage, under ordinary circumstances. The question is then presented, Can the United States cede to Texas these privileges without detriment to their interests? or will they not by these reciprocal stipulations greatly advance and promote their individual and national wealth? The only objection which has been attempted to be urged, but which upon examination will be found to be entirely groundless, is, that by the admission of Texian cotton in the markets of the United States free of duty an undue competition would thereby exist which would be detrimental to the cotton growing interest of the United States. If the United States were the only consumers and manufacturers of raw cotton, this objection would hold good, but it will be recollected that the United States are not only consumers of the raw material, but are exporters to a much greater extent, consequently it matters but little so far as the cotton growing interest of this country is concerned, whether Texian cotton is met in the markets of this country, or competed with in the markets of Europe, in fact the markets of Europe, with regard to the article of cotton, control the price in the markets of the United States, and therefore any competition it matters not how formidable that may arise in the article in the ports of the United States, can have no effect upon the current prices of that great and leading staple.

The tonnage duty, now levied by the French and English Governments in their ports on vessels of the United States, when freighted with Texian cotton, is established at a rate so high that the tonnage in many instances would amount to more than the ordinary freight of the vessel, and consequently has the effect of a prohibition. The entire crop of Texian cotton sent to European markets under the existing state of affairs (it matters not whether the same is shipped from the ports of Texas direct or reexported from the ports of the United States) is now compelled to be carried on board of European ships. It will be readily seen that by the admission of Texian cotton into the ports of the United States free of duty, the same would lose its identity and become mixed with and shipped as United States cotton, which taken in connection with the provisions of a former article would undoubtedly secure to the United States the carrying

trade of Texas, by which a profitable employment will be had for a large number of their merchantmen, which would otherwise be secured by European ships. The United States would not only secure the carrying trade, but would become the great store-house from which Texas would procure nearly the whole of her foreign supplies, which have heretofore exceeded the amount of her exports.

The great manufacturers of the north would here secure against European competition (for such would undoubtedly be the effect) a growing and extensive market for the various articles manufactured by them, such as cotton fabrics of every character, lindseys, jeans, broad cloths hats boots and shoes and articles manufactured from steel and iron, including fire arms, implements of war, farming utensils and implements of husbandry; also the various articles of furniture etc manufactured of wood—glass and tin ware saddlery etc etc etc, while the farmers and planters of the west would find consumption and a market for their immense quantities, of surplus produce, such as flour, bacon, lard etc, thereby giving both in the north, and west profitable employment to a large number of laborers, who must otherwise remain idle and unemployed. Thus it may be seen that this cession of privilege to Texas will not only act without detriment to the United States but will result directly to their great and eminent advantage.

The privilege of entrepot and repackage is not exclusive, but entirely reciprocal and opens to the enterprise of the United States through the territory of Texas extraordinary inducements. The United States, under the provisions of this article of the treaty, would possess the right to ship the articles of growth, produce or manufacture of every character, of their own country to Texas with a view of reexportation free of charge or duty, thereby opening a highway to their citizens to the extensive and lucrative trade of the States of Eastern Mexico, being the nearest route by which many of those states can be reached; the most wealthy, of which, must from their peculiar locality, sooner or later, receive their supplies through Texas. I allude to the northern portion of the States of Tamaulipas and New Leon, together with the whole of Durango, Coahuila and Chihuahua. This view of the case is neither vissionary nor ideal. While Texas constituted an integral part of the Mexican Nation, a most extensive and lucrative trade was carried on by the citizens of the above named Mexican states, with the city of San Antonio, and the various villages upon the western border, and even since the independence of Texas, and during the pendency of hostilities between Mexico and Texas, in the years 1838-9 and 40 not less than one hundred thousand dollars in gold and silver was annually brought into Texas by Mexican traders and exchanged for articles of merchandise. It will be recollected also that in the fall of 1840

a caravan of traders, from the State of Chihuahua passed through Texas and descended Red river and the Mississippi to New Orleans, carrying with them nearly two hundred thousand dollars in the precious metals, which were exchanged in that city principally for dry goods. These traders returned by the route which they had come, being through that portion of Texas included in the counties of Red river and Fannin. The Americans, who accompanied that expedition, and have since returned, report the route as not only practicable, but easy to be traversed. If then such has been the trade, under the circumstances which have existed in that quarter, it might reasonably be concluded that should the difficulties between Texas and Mexico be happily terminated, this trade would become one of great importance. From these reflections I conclude that the provisions of this article are not only necessary but highly beneficial to the interests of both countries. Nothing is ceded to Texas which it is the interest of the United States to deny. Nothing is offered to Texas for which she does not render a fair and full equivalent.

The 6th, 7th, 8th, 9th, 10th, 11th, and 12th, articles provide for the regulation of the commerce between the two countries, during the pendency of a war in which either of the contracting parties may be engaged, whilst the other is neutral, which is highly necessary for their mutual protection. As these articles contain nothing more than the ordinary stipulations, usual in such cases, I deem it unnecessary to allude to them in detail.

The 13th. article provides that the citizens of either country shall have power to dispose of their personal effects by sale, donation, testament or otherwise, and that their representatives, being citizens of either country, shall succeed to the said personal effects, whether by testament or ab-intestate, and may take possession thereof, either by themselves or their agents, upon paying the ordinary expenses etc. This together with the succeeding article, which secures protection to the persons and property of the citizens of each country while in the territory of the other, as well as opening the tribunals of justice for the judicial recourse of the citizens of one country, in the Government of the other, upon the same terms as are usual and customary with the citizens of the country where the court is established, are important in order to secure to the inhabitants of both countries their proper rights, and provide for the numerous cases that daily arise.

The 15th. 16th. 17th. and 18th. articles provide for the admission reception and government of consuls and vice consuls.

The 19th. and 20th. articles provide for the suppression of hostilities among the various tribes of Indians, resident upon the western frontier, and for the return of captives taken by the Indians of one country, and carried into the territory of the other. These provisions are the same, as have heretofore existed between Texas and the

United States, and which have been productive of great mutual benefit to both countries. Interest and justice to the citizens of both countries, as well as humanity to the Red man demand their ratification.

The 21st. article provides for the apprehension of the criminals of one country, who have fled to the territory of the other. National justice, as well as the interests of humanity, calls for such a regulation. By its ratification my own country will be enabled to repel an imputation, which has heretofore been made, and which was as false as it was unfounded.

The last article provides the manner of its ratification.

I have thus briefly noticed some of the leading features of this, the first treaty of navigation and commerce, which has been concluded between the United States, and the Republic of Texas. Taken in detached parts some of its provisions may present some inequalities—taken as a whole it may be considered perhaps as equal, under all the circumstances, and relative situation of the two countries, as could be expected. Should any of its leading features be rejected, I am satisfied that the fragments would not be worth preserving. Should it be ratified as a whole, I feel confident it will advance the mutual interest of both nations. The trade of Texas will be thrown into that channel in which the citizens of Texas desire it should go. The United States will have secured the trade of a growing and rapidly increasing market, which will prove a source of wealth to their merchants, producers and manufacturers, and a profitable and lucrative employment to their shipping.

I have the honor to be with high consideration

Your very Obedient Servant

(Signed)

ISAAC VAN ZANDT

VAN ZANDT TO JONES.^a

PORTER TO WEBSTER.^b

EVE TO WEBSTER.^c

VAN ZANDT TO JONES.^d

WEBSTER TO EVE.^e

^a March 15, 1843. See Calendar of Correspondence with the United States in Part I.

^b March 15, 1843. See Eve to Jones, April 13, 1843 (first in order of this date).

^c March 16, 1843. See Calendar of Correspondence with the United States in Part I.

^d March 16, 1843. There were two letters of the same date. For both see Calendar of Correspondence with the United States in Part I.

^e March 17, 1843. See Calendar of Correspondence with the United States in Part I.