

CALHOUN TO RAYMOND.^a

CALHOUN TO RAYMOND.^b

RAYMOND TO CALHOUN.^c

DONELSON TO JONES.^d

RAYMOND TO ALLEN.^e

Dispatch No 140.

LEGATION OF TEXAS
Washington D. C. January 27th. 1845

Hon E. ALLEN
etc etc, etc

SIR:

Enclosed herewith I have the honor to transmit to you copies of the note of Mr Calhoun, Secretary of State of the United States, of the 22nd. instant, and the Resolution of the House of Representatives which accompanied it, and also my reply to the same.

I also send you a copy of the Joint Resolution declaring the terms on which Congress will admit Texas into this Union as a State, which passed the House of Representatives of the United States on the 25th. instant by a vote of 120 to 98. Several whig members voted for, and several northern democrats against it, so that it was not passed by a strict party vote. The northern democrats who voted against it, at the same time expressed themselves favorable to the measure of annexation, but desired further restrictions with regard to slavery. It will in my opinion pass the Senate by a *small* majority; and be approved by the President of the United States. The door will thus be opened for our admission into this great and glorious confederacy of states; and it will remain for Texas to say whether she will become a State of this Union and upon what terms and conditions. If we but let the slavery compromise stand as the Joint Resolution leaves it, I am well satisfied that the next Congress which convenes at this Capitol, will agree to almost any terms we may name.

^a January 22, 1845. See Raymond to Allen, January 27, 1845.

^b January 22, 1845. See Raymond to Allen, February 6, 1845.

^c January 23, 1845. See Raymond to Allen, January 27, 1845.

^d January 23, 1845. See Calendar of Correspondence with the United States in Part I.

^e A. L. S.

I send to you by to day's mail the "Globe" "National Intelligencer" and "Constitution" of the 25th. instant in which you will find the several Joint resolutions for annexation which were before the House of Representatives and the vote upon each of them.

I have the honor to be, with high consideration,

Your Obedient Servant

CHAS. H. RAYMOND

(Mr Calhoun to Mr Raymond.)

DEPARTMENT OF STATE
Washington [D. C.] January 22nd. 1845

SIR:

I have the honor to enclose herewith a copy of a Resolution of the House of Representatives of the 14th. Inst.; and respectfully request to be furnished with such information as you may possess in reference to the subjects mentioned, not heretofore communicated by you to the Department, as may enable me to answer the call, at as early a day as possible.

I have the honor to be, with high consideration,

Sir,

Your Obedient Servant,

(Signed)

J. C. CALHOUN.

To C. H. RAYMOND Esq
etc, etc, etc

[Next come copies of the resolution referred to, inquiring after the financial condition, population, and landed resources of Texas;^a Raymond to Calhoun, January 23, 1845,^b in reply to Calhoun's of the 22nd; and of the joint resolution of the United States Congress, declaring the terms of annexation as it stood when the despatch was written.^c]

DONELSON TO CALHOUN.^d

DONELSON TO CALHOUN.^e

RAYMOND TO CALHOUN.^f

^a *Cong. Globe*, 28th Cong., 2nd Sess., p. 135.

^b See Calendar of Correspondence with the United States in Part I.

^c See *Cong. Globe*, 28th Cong., 2nd Sess., p. 193.

^d January 27, 1845. See Calendar of Correspondence with the United States in Part I.

^e January 30, 1845. See Calendar of Correspondence with the United States in Part I.

^f February 6, 1845. See Raymond to Allen, February 6, 1845.

RAYMOND TO ALLEN.^a

Dispatch No. 141.

LEGATION OF TEXAS
Washington D. C. Feby 6th. 1845Hon E. ALLEN
etc. etc. etc.

SIR

I have the honor to acknowledge the receipt of your dispatch of the 10th ultimo; and am gratified that my reply, as communicated in my private dispatch of the 17th of December, last, to the inquiries so frequently addressed to me by members of Congress and others in this country relative to the present views of our Government in regard to annexation, meets the approbation of the President.

A majority of the Committee on Foreign Relations in the Senate reported on the 5th. inst; against the Joint Resolution for annexation which had previously passed the House of Representatives. Their principal objection was the unconstitutionality of the proposed mode of admitting Texas into the Union; they however suggested no other method for its accomplishment, but recommended that the whole subject be laid on the table.

On yesterday, Col. Benton withdrew his former bill for the annexation of Texas; and offered a substitute for the same. I herewith enclose you a copy of his substitute, which after some alterations, or perhaps as it now stands, will probably meet the approval of three fifths of the Senate.

I have the honor, also, herewith to transmit you a copy of the note of Mr. Calhoun, Secretary of State of the United States, of the 22nd. ultimo, in reference to two Texan boys who were captured by Indians, and supposed to be among the Wichitaws, within the United States, and of my reply to the same of this date.

Mr. Calhoun is just recovering from a severe attack of pneumonia. I have the honor to be, with sentiments of high regard and esteem
Your Obedient Servant

CHAS. H. RAYMOND

[Next follow copies of Benton's substitute bill referred to, providing for negotiations for annexation, and appropriating one hundred thousand dollars to pay the expense of such negotiations;^b Calhoun to Raymond, January 22, 1845.^c]

(Mr Raymond to Mr Calhoun.)

LEGATION OF TEXAS
Washington February 6th. 1845

The Undersigned, Chargé d'Affaires *ad interim* of the Republic of Texas has the honor to acknowledge the receipt of the note of Mr

^a A. L. S.^b See *Cong. Globe*, 28 Cong., 2 Sess., p. 244.^c See Calendar of Correspondence with the United States in Part I.

Calhoun, Secretary of State of the United States, of the 22nd. ultimo, informing him of the measures taken by the Government of the United States for the recovery of two Texan white boys, who were supposed to be in captivity among the Wichitaw Indians, within the United States, and of the fact, that, after a careful examination through the village inhabited by that tribe, the persons making the search became satisfied the boys were not in possession of the Wichitaws.

The Government of the Undersigned will be gratified to learn of the earnest efforts so promptly and willingly made by the Government of the United States for the recovery and restoration of the two boys to their kindred and country; and although those efforts have, as yet, failed in effecting their humane purpose, they nevertheless furnish renewed evidence of the friendly disposition of the Government of the United States, towards the Government and people of Texas, and of its determination to fulfill, in good faith, its treaty stipulations with that country.

As there is a rumor, perhaps well founded, that the boys are held as captives by Kickapoos or Comanches, Indian tribes inhabiting the territory of the United States, the Undersigned entertains the hope that the Government of the United States will not relax its efforts until the place of their captivity be discovered and they be safely delivered into the hands of their friends.

The Undersigned avails himself of this occasion to offer Mr Calhoun renewed assurances of his high consideration.

CHAS. H. RAYMOND

To the Honorable

J. C. CALHOUN

etc. etc. etc.

RAYMOND TO CALHOUN.^a

SMITH TO DONELSON.

DEPARTMENT OF STATE

Washington on the Brazos.

February 10th 1845

The Undersigned, Secretary of State of the Republic of Texas, has the honor to acknowledged the receipt of the note of the Hon. A. J. Donelson Chargé d' Affaires of the United States of America, bearing date the 2d Decr. 1844. together with the accompanying documents, in relation to a complaint made against the Collector of the Customs at Sabine in Texas, inasmuch as this officer required

^a February 10, 1845. See Raymond to Allen, February 18, 1845.

the payment of tonnage duties from certain American vessels resorting to the port of Sabine for commerce. "The right of every nation to make those interior regulations respecting commerce and navigation which it shall find most convenient to itself and to reserve to itself the liberty of admitting at its pleasure other nations to a participation of the advantages of its commerce, is a doctrine which has received the solemn and repeated sanction of the American Government, and will not, it is presumed, be controverted by the Hon. Mr. Donelson. On this clear principle the Government of Texas may of right establish the conditions on which they will admit other nations to come to their shores and receive the products of their soil or carry on commerce with their inhabitants; and they may require as one of the conditions of vessels trading with their port of Sabine the payment of dues or tonnage duties

The town of Sabine in Texas is a commercial *port*; the adjacent country along Sabine Bay is washed by navigable waters; and the whole is subject to all the uses and incidents appertaining to a coast bordered by navigable waters. The port in question cannot be used except as a *port*, a *maritime depot*, for ordinary commercial purposes, neither can it by any fiction be regarded in any other light. If Sabine be not used as a *port* it cannot be used for commercial purposes at all; and the Gov't of Texas, as already intimated, may require as one of the conditions on which they will allow foreign vessels to trade with this port, the payment of tonnage duties; and if the payment of these duties be refused may bring to all vessels so refusing and compel payment. Relatively to this point, the undersigned begs to cite Mr Jefferson who in 1792, then Secretary of State under General Washington declared in a communication on a matter similar to the one now under discussion that, "the right to use a thing comprehends a right to the means necessary to its use and without which it would be useless." And this doctrine has been since explicitly asserted by all the American text writers on International Law and solemnly affirmed and acted on by the American Government. If moreover the use of such means be refused on a plea of "jurisdiction" or the use so shackled by unnecessary regulations as to render it unavailable by Texas, it then becomes an injury of which Texas may demand redress.

If the Government of Texas do not possess the right to collect tonnage dues and establish the other customary regulations of commerce for the port of Sabine, then have we at Sabine the most absolutely free port in the world, and there exists no authority any where to regulate or supervise the commerce that may be carried on thereat. The undersigned does not suppose that the Hon. Mr

^a Opposite the beginning of this sentence in the margin are written the words, "Treaty between France and the United States of 1778, preamble."

Donelson on the plea of "jurisdiction" would claim for his Government the right to establish a custom house at the Sabine to regulate the commerce of the port, thus making the soil of Texas appurtenant to the water which washes its shores. The authority to regulate the commerce of the port in question must exist somewhere. The undersigned believes it is vested in the Nation owning the *terra firma*. Custom Houses are established on *land* and not on the *water* although their operation extends over the water.

If the right contended for by Texas exist at all, it is and must of necessity be exercised as a *perfect* right, otherwise it would be utterly nugatory. It would be idle to establish regulations for the commerce carried on upon its coast, if vessels in sight and even within short gun shot of the shore may openly set at naught or evade those regulations. And a limited jurisdiction for this purpose must be exercised by Texas over the adjacent waters.

So bold an evasion and flagrant a violation of the revenue laws of Texas as has been attempted by the averment that the commerce between the shore and foreign bottoms has been carried on by means of flat boats or keel boats, will not surely be justified by the Hon Mr. Donelson. To prevent like audacious frauds, England and the United States claim and exercise for this special purpose a jurisdiction of twelve miles from their coasts respectively, within which distance they will not allow such fraudulent trans-shipments to be made.

By the terms of the Treaty of 1819, made between Spain and the United States, renewed in 1828, between Mexico and the U. States and finally established in 1838 between Texas and the United States, as the basis for running the boundary line, without any change of language so far as relates to the boundary and the waters of Sabine Bay; it is declared that the "use of the waters and the navigation" of the Bay are common to the inhabitants of both countries. This stipulation is declaratory of the right of Texas to the use of the waters in question, and is as clear and essential a portion of the Treaty as that which establishes the boundary line along the Western bank of these waters.

The undersigned has entered into a brief argument above to show on sound principles of public law and from the necessity of the case, that a *barren* use was not intended—a bare permission to sail in and out of Sabine Pass—but a beneficial use for all things which may be lawfully done on shore. If foreign vessels resort to the port of Sabine to receive the products of Texas, the Nation owning the land and this nation alone, can impose tonnage duties and if necessary can go upon the water to enforce the collection of them by virtue of their right of use solemnly recognised in the Treaty in question. It would be violative of the best established of all rules of interpreta-

tion, so to interpret the "*jurisdiction*" as to exclude the *use*; both rights repose on the same basis and are not incompatible; effect must therefore be given to both. No incompatibility or conflict can arise, inasmuch as the United States cannot claim to establish custom houses at the port of Sabine nor collect duties upon Texian soil on the products shipped or foreign merchandize imported there; To do these acts appertains of right exclusively to Texas on principles of public law and by the provision of the Treaty of Boundary.

The Undersigned cannot therefore admit the opinion expressed by the Hon Mr Donelson that "the authority to collect these duties cannot be recognised by the United States without a surrender of their jurisdiction of the waters of Sabine pass, Lake and river"; on the contrary he conceives that the Government of Texas have a perfect right to collect these duties and to the "use and navigation" of the waters in question for this purpose, and their collection does not conflict with the just claims of the United States nor afford that Government any good cause of complaint. He cannot believe that the Government of the United States propose so to stretch the interpretation to be given to their "*jurisdiction*" as to sustain their citizens in violating those laws which the people of Texas may legitimately establish, as a condition of commerce with them.

The undersigned embraces this opportunity to present to the Hon. Mr Donelson assurances of the high consideration with which he has the honor to be.

Most Respectfully

His Very Obedient Servant

(signed)

ASHBEL SMITH

Hon. A. J. DONELSON

Chargé d'Affaires of the United States of America
etc. etc. etc.

RAYMOND TO CALHOUN.^a

SMITH TO RAYMOND.

DEPARTMENT OF STATE

Texas, Feby. 11, 1845.

SIR:—

I have the honor to acknowledge the receipt of your despatches bearing date the 4th and 16th ultimo.

His Excellency the President wishes you to remain at your post until the 4th March next, and in the meantime to use your most strenuous exertions in every proper manner to accomplish the

^a February 11, 1845. See Raymond to Allen, February 13, 1845.

annexation of Texas to the American Union—a measure earnestly desired by this Government. The Hon. D. S. Kaufman has been appointed Minister Chargé d’Affaires of this Country to reside near the Government of Washington on the Potomac and will proceed to his post early in the spring. It is the wish of H. E.^a the President therefore that as soon as may be convenient after the 4th of March you take leave of the American Government in the customary manner, and return to Texas, unless the interests of this country should render it expedient to delay for some short time your departure. I am also instructed by the President to express to you his entire satisfaction with your efforts to accomplish annexation and generally with the manner in which you have executed the duties devolving on you as acting Chargé d’Aff. of Texas.

* * * * *

An exchange of official documents is a courtesy frequently practised between different Governments. From the British Gov. we have received publications made by order of Parliament of great value. Should a proper occasion present itself, you can intimate verbally to the Secretary of State that this Gov. would willingly make a similar exchange of public documents with the United States. The collection of “American State papers” published under direction of Congress would be highly useful to us.

I have the honor to be, with sentiments of high consideration

Very Respectfully

Your most obedient Servant.

CHARLES H. RAYMOND Esq.
Actg. Chargé d’Affaires of Texas, etc.

THOMAS TO ARBUCKLE.^c

CRAWFORD TO ARMSTRONG.^d

RAYMOND TO ALLEN.^e

[Despatch No. 142.]

Hon E ALLEN
etc etc etc

LEGATION OF TEXAS
Washington D. C. Febr'y 18th 1845

SIR:

Your despatches of the 16th and 20th ultimo came to hand on the 9th inst., and received my immediate attention; as you will perceive

^a His Excellency.

^b The paragraph omitted relates to Raymond's salary.

^c February 13, 1845. See Raymond to Allen, February 21, 1845.

^d February 17, 1845. See Raymond to Allen, February 21, 1845.

^e For this letter and its inclosures, see Records of Department of State (Texas), Book 43, pp. 59-61.

by copies of my notes to Mr. Calhoun, Secretary of State of the United States, of the 10th and 11th instant, herewith enclosed.

On the 11th instant the Department of State submitted the testimony of Messrs Bourland and Wright to the Committee of Ways and Means of the House of Representatives, in order that the necessary appropriation may be made by Congress to meet the demands of our Government, which I cannot doubt will be done.

I understand, from the Secretary of State that the Department of War, to which the case of Mrs. Simpson's children has been referred, will adopt the most active and efficient measures to procure the release of the captives and their restoration to friends and country. I will forward you a copy of the orders of the War Department touching this matter so soon as I shall be furnished with them.

The President and Vice President elect arrived in the City on Thursday last. On Saturday I paid my respects to them and met with a warm and cordial reception from both.

The Senate has not yet acted on the Joint Resolutions for the annexation of Texas. Their discussion will probably consume the whole of this week; but if the friends of annexation in the Senate will, even then, unite upon the House resolutions, or a similar plan, the measure can and will be carried the present session.

I have the honor to be, with sentiments of highest regard,
Your obedient servant,

CHAS H RAYMOND

(Mr Raymond to Mr Calhoun.)

LEGATION OF TEXAS

Washington February 10th 1845

The undersigned, Chargé d'Affaires *ad interim* of the Republic of Texas, by direction of his Government has the honor to transmit, herewith, to Mr. Calhoun, Secretary of State of the United States, the depositions of James Bourland, Collector of customs for the Red River District, in Texas, and George W Wright, a citizen of Lamar county and Senator in the Texian Congress, in relation to the seizure, in March 1843 by said Collector, of certain goods introduced into that Republic in violation of her revenue laws, by citizens of the United States—the subsequent forcible rescue of those goods by the importers and their abusive treatment, at the same time, of the person of the Collector—all of which has heretofore been the subject of correspondence between the two Governments.^a

The depositions are properly authenticated before the Hon M. P. Norton, Judge of the District Court of the 6th Judicial District of Texas; and establish most clearly the facts of the illegal introduction

^a For the depositions of Bourland and Wright, see Allen to Raymond, January 20, 1845.

of the goods, their forcible seizure and taking away by citizens of the United States; and, as near as possible under the circumstances, the amount of damage suffered in consequence.

The evidence being full and explicit, covering all the points suggested in Mr Calhoun's note of the 2nd. of December, last, to the undersigned, on this subject; and the whole case having been fully examined and discussed, the undersigned can at present, see no obstacle to its speedy, final and satisfactory adjustment—an event which he hopes soon to have the pleasure of communicating to his Government.

The undersigned avails himself of this occasion to offer Mr. Calhoun assurances of his distinguished consideration.

CHAS. H RAYMOND

To the Honorable J. C. CALHOUN
etc etc. etc.

(Mr. Raymond to Mr Calhoun.)

LEGATION OF TEXAS

Washington February 11th 1845

The undersigned Chargé d'Affaires *ad interim* of the Republic of Texas, has the honor to inform Mr Calhoun, Secretary of State of the United States, that Major Thos G Western, Superintendent of Indian Affairs of Texas, has received, under date of the 6th ultimo, a letter from Messrs L. H Williams and B Sloat, Indian Agents in the service of that Republic, from which it appears that the two children of Mrs. Simpson, a widow lady—the one a son named William, about twelve, and the other a daughter named Jane, about fourteen years of age, who were stolen from their mother's residence at Austin on the Colorado river, in Texas, early in the month of November, last, are now in the possession of the *Waco* and *Toweash* or *Wichita* Indians, encamped in the *Wichita* mountains, about 550 miles northerly from the City of Washington, Texas, and within the territory of the United States. The tribe of Indians, with which the Wacos are encamped in the mountains, is known indifferently as the *Toweash* or *Wichita*.

Messrs Williams and Sloat were sent out immediately after the news of the capture reached the ears of the President for the purpose of seeking and recovering these children from their Indian captors, but having reached a point some two hundred miles above the said City of Washington, they found it impossible to proceed. The prairies, for hundreds of miles across which they must travel, being at that season destitute of grass, and furnishing no food for their horses. They, however, ascertained the facts stated in their letter, to Major Western, from the Comanches and other friendly Indians, whom they met in their travels and at Torrey's trading house, as well

as from their personal observation and knowledge of the course and character of the Indians committing the outrage. These agents will recommence their journey so soon as the grass shall spring up, and will reach Fort Towson early in the Spring.

In view of the foregoing facts, the undersigned is directed by his Government, formally, but most respectfully, to request of the Government of the United States the aid of its authorities to effect the release of these prisoners and their safe conveyance to Fort Towson or some other point, where they can be delivered to the Texian agents, and thus restored to their home and friends, as provided in the 33rd article of the Treaty of 1831.

The hope is confidently indulged that the efforts of the Texian Agents, seconded by the powerful assistance, which the President of Texas doubts not will be cheerfully accorded by the Government of the United States, will lead to the speedy release of these youthful captives from their savage masters; and while engaged in accomplishing this humane object, it is not improbable that the two boys mentioned in Mr Van Zandt's note of the 10th of August, last, who were captured by the Indians on the Trinity river in the early part of last year, but whose place of captivity the agents of the United States have hitherto been unable to discover, may also be found and restored to their country.

The undersigned avails himself of this occasion to offer Mr Calhoun renewed assurances of his distinguished consideration

CHAS H RAYMOND

To the Honorable J. C CALHOUN
etc. etc. etc.

WILKINS TO CALHOUN.^a

CALHOUN TO RAYMOND.^b

RAYMOND TO ALLEN.^c

Dispatch No 143.

LEGATION OF TEXAS
Washington D. C. February 21st. 1845

Hon E. ALLEN
etc. etc. etc

SIR

I have the honor to transmit you herewith a copy of the note of Mr Calhoun, Secretary of State of the United States, of the 20th.

^a February 18, 1845. See Raymond to Allen, February 21, 1845.

^b February 20, 1845. See Raymond to Allen, February 21, 1845.

^c A. L. S.

inst. and the documents which accompanied it, in reply to my note to him of the 11th. inst., in which I requested the interposition of his Government in effecting the liberation of the two children of Mrs Simpson from their captivity and their restoration to their own country; and also suggested that further inquiries and efforts be made, at the same time, for the discovery, release and safe return to their home and friends of the two boys who were captured by Indians in the early part of last year on the Trinity, and supposed to be held as captives by Indians within the territory of the United States.

I deemed it unnecessary, in my communication to Mr Calhoun, to state that our Government would defray the expenses incurred in "the transmission and maintenance" of the children should they be fortunately recovered, because this is fully understood and provided for in the 33rd. article of the treaty of 1831.

The Government of the United States, as you will perceive by reference to the orders given, has evinced a laudable disposition to carry out in good faith its treaty stipulations with our country, and manifested a most commendable anxiety for the welfare of the captive children.

Some of the friends of annexation in the Senate are in favor (for the purpose of strengthening the measure and adding to their forces) of attaching to the joint resolutions of the House Col Benton's proposition, as a proviso, to go into effect only in case Texas should refuse to accede to the terms expressed in the proposition which has passed the House. I succeeded on yesterday in ascertaining, to my entire satisfaction, that all essential differences among the democratic Senators had been removed, and that they will come up to the support of the measure of annexation in one solid phalanx, and that a sufficient number of whig Senators will unite with them to carry it. The only question among them seems now to be, whether they will adopt the joint resolutions as they passed the House, with perhaps some slight and not very material alterations, or pass them with Col Benton's proposition attached as a proviso. With the vote of Senator Foster of Tennessee either plan could be carried, but I understand he objects to the *proviso* proposed, and unless he yield, the joint resolutions of the House must be passed pretty much as they now stand.

It is understood that the President elect is exceedingly desirous to have the question settled the present session of Congress; and that letters have just been received here from Gov Wright and Ex President Van Buren of New York urging *immediate annexation*. Col Benton seems disposed to yield, to some extent, his own views to those of the great body of his party. In a conversation I had with him, on yesterday, he stated that he entertained not the slightest doubt of the passage of the measure at this session to admit Texas as a State into this Union.

Information reached here yesterday, which is believed by many to be authentic, that the new Government of Mexico had intercepted and communicated to Congress a dispatch from Santa Anna to the British Minister, by which the astounding fact was disclosed that he had entered into a treaty with Great Britain, transferring to her the two Californias. But being made without authority and in violation of the Constitution the treaty cannot, of course, be binding on the Mexican Nation.

If we are to credit the testimony of the "London Times" and the "Havre Journal," England has made overtures to France to unite with her in measures to prevent the annexation of Texas to the United States. I have sent you, "The Globe" of the 18th. and 20th. instants, containing extracts from the above named newspapers.

My last dispatch from your Department is dated the 20th. ultimo. I have the honor to be with distinguished regard

Your Obedient Servant

CHAS. H. RAYMOND

[Inclosed are copies of the following:^a Thomas to Arbuckle, February 13, 1845; Crawford to Armstrong, February 17, 1845; Wilkins to Calhoun, February 18, 1845; Calhoun to Raymond, February 20, 1845.]

RAYMOND TO ALLEN.^b

Dispatch No 144.

LEGATION OF TEXAS

Washington D. C. February 28th. 1845

Hon E. ALLEN

etc. etc. etc.

SIR:

The door is at length opened for the admission of Texas into this Union. The great struggle is over and nothing now remains to be done except to agree upon the terms of "admission and cession". The contest has been severe—the battle well and nobly fought—annexation has triumphed, and its friends have gained a glorious victory.

Enclosed herewith I have the honor and gratification of transmitting to you a copy of a "Joint Resolution for annexing Texas to the United States" which has just been passed by the Congress of this Republic.^c On yesterday it passed the Senate, in its present shape, by a vote of 27 to 25—To day the House concurred in the Senate's amendment by a vote of 132 to 76.

^a See Calendar of Correspondence with the United States in Part I.

^b See Records of Texan Legation at Washington from August 16, 1844, to November 8, 1845 (in Texas State Library), p. 38.

^c For the resolution, see *Cong. Globe*, 28th Cong., 2nd Sess., p. 362.

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The terms and conditions of the Joint Resolution, as originally passed by the House, may not be acceptable to Texas: and I therefore hail with joy the amendment of the Senate; and am fully persuaded that the resolution, as it now stands, will accomplish the great object which its friends had in view.

I have the honor to be with high regard,
Your obedient Sert.

CHAS. H. RAYMOND

JOINT RESOLUTION FOR ANNEXING TEXAS TO THE UNITED STATES.^a

CALHOUN TO DONELSON.^b

ARBUCKLE TO ADJUTANT-GENERAL [JONES].^c

ALMONTE TO CALHOUN.^d

BUCHANAN TO DONELSON.^e

BUCHANAN TO ALMONTE.^f

NEWELL TO SMITH.^g

[Concerning the collection of duties from American vessels at Sabine.]

SMITH TO RAYMOND.

DEPARTMENT OF STATE

March 21, 1845.

SIR,

I have the honor to acknowledge the receipt of your dispatches nos 142 and 143 addressed to this Department, together with the enclosed documents.

From the subjoined memorandum communicated to me from the Indian Bureau, you will learn that of the two children of Mrs. Simpson stolen by the Comanches, one is dead and the other has been restored to his mother. Of course all further inquiry after them is superseded. In communicating these facts to the American Govt.

^a March 1, 1845. See *Senate Journal*, 9th Tex. Cong., Extra Session, p. 13-14. Copy inclosed with Donelson to Allen, March 31, 1845.

^b March 3, 1845. See Calendar of Correspondence with the United States in Part I.

^c March 6, 1845. See Calendar of Correspondence with the United States in Part I.

^d March 6, 1845. See Raymond to Allen, April 30, 1845.

^e March 10, 1845. See Calendar of Correspondence with the United States in Part I.

^f March 10, 1845. See Raymond to Allen, April 30, 1845.

^g March 16, 1845.

you will make the proper acknowledgments for their prompt efforts to recover the children in question.

I beg to call your attention to the exchange of official documents between this and the United States Government as suggested in a former despatch of mine to you. Cases are occurring almost daily in which these papers would be highly convenient, not to say that they are indispensable to us. Since the date of my last dispatch, I have received a communication from M. de Saligny proposing a similar interchange between ours and the French Government. If the exchange proposed shall be acceded to I shall place the Laws, etc of this country at the disposition of the American Chargé d'Affaires so soon as he shall reach his post.

[Here follows the memorandum.^a]

SMITH TO NEWELL.

DEPARTMENT OF STATE,
WASHINGTON ON THE BRASSOS

March 24, 1845

SIR,

I have to acknowledge the receipt of your communication of the 16th Instant stating that "the absence of the Hon A. J. Donelson Chargé d'Affaires of the United States near the Government of Texas having created that kind of emergency which authorizes Consuls of the United States to communicate with the Government of Texas", and calling my attention to matters touching the collection of duties by the Collector at Sabine on American vessels resorting to that port for commerce.

I beg to state in reply that this subject will be attended to on the part of Texas immediately on the return of the Hon the Chargé d'Affaires of the U. States to his post near this Government. Mr Newell is undoubtedly aware that a discussion of this matter at the present time would be without any useful object.

I take this occasion to mention that the Chief Clerk of this Department to whom has been entrusted the collection and forwarding of the late Hon T. A. Howard's effects, got the same into possession yesterday, and that he will forward them without delay, by the first safe means, of doing so.

I am with great respect

Your most obed. servant

A. S.

STEWART NEWELL Esquire
Consul of the U. States
Etc. Etc. Etc.

^a See Calendar of Correspondence with the United States in Part I, under title of Raymond to Buchanan, April 30, 1845.

DONELSON TO BUCHANAN.^a

DONELSON TO BUCHANAN.^b

DONELSON TO ALLEN.^c

MARCY TO BUCHANAN.^c

RAYMOND TO SMITH.^d

No 145.

LEGATION OF TEXAS

Washington D. C. March 31st. 1845

HON ASHBEL SMITH

Secretary of State

SIR:

I have the honor to acknowledge the receipt of your despatch of the 11th. ultimo, notifying me that the Hon David S. Kaufman, had been appointed Minister Chargé d'Affaires of Texas to reside near the Government of Washington on the Potomac, and granting me permission to return home as soon as convenient after the 4th. instant, unless the interests of Texas should render it expedient to delay for some short time my departure. Had I consulted my own inclination, I should not have failed to take advantage of the permission to return, but in view of the posture of our affairs in respect to annexation, I thought it proper and expedient, and therefore my duty, to remain at my post until I should learn the determination of the Government concerning the overtures, which had been made to it, by this Government, through Major Donelson its Chargé d'Affaires, for the annexation of Texas to the American Union, unless the arrival of Major Kaufman, in the mean time, should render my longer stay unnecessary. Immediately after the receipt of your dispatch, which came to hand about two weeks ago, I called upon Mr Buchanan, Secretary of State, of the United States, and mentioned my desire to leave in a few days and asked his opinion about the propriety of my doing so. In reply he urged me with considerable earnestness to delay my departure until we should hear from Texas, after the overtures for annexation had been presented to her Government, as in all probability it would be necessary afterwards

^a March 24, 1845. See Calendar of Correspondence with the United States in Part I.

^b March 28, 1845. See Calendar of Correspondence with the United States in Part I.

^c March 31, 1845. See Calendar of Correspondence with the United States in Part I.

^d See Records of Texan Legation at Washington from August 16, 1844, to November 8, 1845 (in the Texas State Library), pp. 39-42.

for this Government to hold some correspondence with the Texian Representative here upon the subject. In these views Mr Walker, Secretary of the Treasury, coincided fully and expressed his strong conviction of the importance of my remaining. Under these circumstances I have, with some inconvenience to myself, prolonged my stay here and purpose, unless I receive instructions to the contrary, to postpone taking my leave of this Government until I hear the result of the overtures alluded to; and inasmuch as the resolutions for annexation passed the Congress of the United States after the date of your despatch and perhaps unexpectedly too, I have thought my determination to remain a short time longer would meet the wishes and approbation of the Government.

Your expression of the President's entire satisfaction with my efforts to accomplish annexation, and generally with the manner in which I have executed the duties devolving on me as Acting Chargé d'Affaires of Texas, has caused me the highest gratification.

Shortly after the receipt of your despatch I had a conversation with Mr Buchanan in regard to an exchange of public documents between the two Governments. He said as soon as the press of business consequent upon the commencement of a new administration was over he would take pleasure in furnishing us with the collection of "American State papers" and other public documents, if there were any such under the control of his Department.

On Friday last; I had an interview with him at the Department of State, and among other things mentioned the Snively and Red River cases,^a and requested him when he should reply to my note to Mr Calhoun of the 10th. ultimo, communicating the evidence in the last named case, to inform me what disposition had been made of them by Congress, and especially whether or not any appropriation had been made for the payment of the indemnity claimed in those cases by the Texian Government. To which he remarked that his time had been so much occupied in Cabinet Council and in receiving and deciding upon applications for office that he had been unable to take up any of the back business of his Department, but assured me that on his return from Pennsylvania, where he is going this week to remain only a few days, he would examine into the cases referred to and communicate to me their condition. I understood from the Committee of "Ways and Means," to whom was referred the correspondence and evidence in those cases, that no report whatever was made thereon, assigning as a reason the lateness of the period at which they received the evidence.

I have succeeded in collecting together a mass of valuable public documents, comprising reports of Congressional Committees, Heads

^a The "Red River" case was that of the attack on Collector Bourland. See note c, p. 297.

of Departments, etc, and have this day forwarded the box containing them to your Department, via. Baltimore, care of H. H. Williams Esq. our Consul, with directions to have them shipped by the first safe opportunity to Galveston.

Mr Brower, Texian Consul, N. Y., to whom I granted leave of absence for a few months, has returned from Europe and re-assumed the duties of his office.

I hope it may be in my power to reach Texas by the 1st. of May, next.

With sentiments of highest consideration, I have the honor to be

Most respectfully

Your obedient Servant

CHAS. H. RAYMOND

DONELSON TO BUCHANAN.^a

DONELSON TO BUCHANAN.^b

DONELSON TO ALLEN.^c

LEGATION OF THE UNITED STATES,

Washington, Texas, April 7, 1845.

The undersigned, Chargé d'Affaires of the United States, has the honor to acknowledge the receipt of the communication from the Hon. Ashbel Smith, Secretary of State of Texas, dated the 10th of February last, but not delivered to the undersigned until his recent arrival here.

This communication is an answer to the note of the undersigned, dated the 2d. of December last, in relation to the attempt of the Collector of the Customs on the west bank of the Sabine, to exact duties from the schooners Louisiana and William Bryan, vessels belonging to the United States, and navigating the waters of the Sabine river and bay, under the circumstances stated in that note; and suggesting the expectation that this Government, not apprized of the construction of powers under which that collector had acted, would issue such instructions as would hereafter prevent such infraction of the rights of vessels of the United States. But it appears that the conduct of this officer is justified.

To the general observation made by the Hon. Mr. Smith, in opening of his remarks on this subject, claiming for Texas the right to

^a April 1, 1845. See Calendar of Correspondence with the United States in Part I.

^b April 3, 1845. See Calendar of Correspondence with the United States in Part I.

^c A. L. S.

establish such regulations as she may think proper, respecting her commerce and navigation, within her own waters and jurisdiction, the undersigned cheerfully assents. This is a right conceded to all independent nations, and is the necessary consequence of sovereignty. But it was not in derogation of this right, that exception was taken to the conduct of the Collector on the Sabine. It was, that that collector, within the jurisdiction of the United States, claimed the right to extort duties from vessels not bound to a port of Texas, but sailing within the waters of the United States, and charged with no maritime *tort*, either to Texas or any other nation.

If said vessels had sailed to Galveston, or any of the bays, inlets, or rivers of Texas, this complaint would not have been made, and the obedience due to the revenue laws of Texas, would have been readily admitted. As far as the jurisdiction of Texas extends, it is undoubtedly exclusive and absolute, and no restriction can be placed upon it without her consent; because such restriction, if imposed by another power, would be, to that extent, an acknowledgment that such power was her superior. Such is the law of nations, as understood and enforced by all enlightened governments.

What is the effect of these principles, applied to the claim in question, when it is conceded that the jurisdiction of the United States extends to water mark on the West bank of the Sabine, and from thence to the sea? The undersigned cannot suppose that argument can make more plain the conclusion which the mere statement of the principles so obviously presents.

But the Hon. Mr. Smith is of opinion, that the treaty which secures to the inhabitants of Texas the use of the waters of the Sabine would be a nullity, if the right to collect the tonnage duties in question did not result. Such could not have been the understanding of the two high contracting parties to the treaty; for the same clause which gives to the respective inhabitants of the two nations, the common use of the waters of this boundary for the purposes of navigation, expressly cedes the exclusive jurisdiction of the same to the United States; nor is it likely that such is the understanding of the inhabitants who enjoy this right, and who, but for this stipulation, might have been at any time deprived of it by the United States.

Nor is this construction of the treaty altered, in the judgment of the undersigned, by the declaration of Mr. Jefferson that "the right to use a thing comprehends the right to the means necessary to its use, and without which it would be useless". This language has reference to the condition in which the inhabitants of the valley of the Mississippi would have been placed by a denial to them of the right to navigate this river to and from its mouth—a right enjoyed by them both before and after the revolution which established the independence of the United States, and which was never abandoned,

though its relinquishment was often insisted upon by the powers possessing jurisdiction of the river south of the point where it left the boundary of the United States, until the purchase of Louisiana. But is there an analogy between this right and that now claimed by the Hon. Mr. Smith, for the enforcement of revenue regulations on the waters of the Sabine? Texas, standing in the place of Spain, does not deny the competency of Spain to part with her jurisdiction over the Sabine. Mr. Jefferson, in maintaining for the United States, a claim to the free navigation of the Mississippi, never asserted that the United States could not relinquish it. Texas possesses this right of navigation by contract as the representative of Spain, and is bound in the exercise of it, not to interfere with the jurisdiction of the United States. Mr. Jefferson never claimed the right to make the vessels of France or Spain pay tonnage duties at the mouth of the Mississippi, until the United States possessed jurisdiction there. Texas claims this right at the mouth of the Sabine, admitting at the same time that she has no jurisdiction there, and when it is obvious that the jurisdiction necessary to give the power to enforce this right was withheld, in order to avoid just such difficulties as those which now exist and which are inseparable from the concurrent authority of two separate nations over the same subject.

According to the treaty referred to, under which the respective rights of Texas and the United States on the subject of limits, are defined, and by which courts, having jurisdiction of all maritime *torts*, happening on the waters of the Sabine, must be governed, Texas has no commercial port on that river, in the sense in which the Hon. Mr. Smith treats it, as a place where commercial regulations can be enforced by her on the waters thereof. To the existence of such a port there must not only be ownership of soil but jurisdiction of water. And it would be as unsound to derive this right of jurisdiction from the inconvenience attending the want of it, as it would be for an individual possessing only a limited estate in lands or other property to claim the fee simple or superior title, because with this title he could the better control the use. Spain voluntarily gave up this superior title, and was content to stipulate for the limited one for the use of her inhabitants. For valid and satisfactory considerations, she solemnly agreed that the "terra firma" of Texas, on the Sabine, should be the limit of her jurisdiction, which should include neither the islands nor the waters of that river. Yet, in opposition to such treaty stipulations, it is contended that the moment Texas chooses to build a house at Sabine in Texas, and to call that house a port, this jurisdiction becomes subservient to that of the land. The language of the Hon. Mr. Smith is, that "he does not suppose the Hon. Mr. Donelson, on the plea of jurisdiction, would claim for his Government the right to establish a custom-house at the Sabine, to regulate the commerce

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of the port—thus making the soil of Texas appurtenant to the water, which washes its shores. The authority to regulate the commerce of the port in question must exist somewhere. The undersigned believes it is vested in the nation owning the *terra firma*. Custom houses are established on *land* and not on *water*, although their operation extends over the water."

The difficulty in the mind of the Hon. Mr. Smith, will disappear, the moment he perceives the misapplication he has made of terms. It is not by calling Sabine in Texas a port, that it becomes one in the full commercial sense. There must be jurisdiction of water as well as of land; otherwise, the custom house located there will be as unavailable as the medium of enforcing revenue duties from vessels of the United States, using the water under the terms of the treaty, as if it were one hundred miles off, in the back country. Within her jurisdiction, above water mark and on the land, Texas is competent as stated before, to establish such rules and regulations as she may choose to prescribe—she may say that there shall be no import or export, to or from her territory, without the payment of duties at that house, or any other house on the *terra firma*, next to the Sabine, and she may arm the collector with authority to enforce her regulations; but these regulations become inoperative the moment they assume an authority over the waters of the Sabine, or interfere with a jurisdiction which is independent of hers, and is absolute and exclusive over those waters. It cannot then be a question, that the authority to regulate commerce on the waters of the Sabine does not belong to Texas; nor can it be doubted that all regulation not incompatible with the right of the inhabitants of both countries to the common use of those waters, for the purposes of navigation, necessarily belongs to the United States, since it can belong to no other nation without an infringement of the sovereignty acquired by the treaty of 1819, with Spain.

But for the sake of testing the soundness of the argument advanced by the Hon. Mr. Smith, let it be supposed that the United States, instead of acquiring exclusive jurisdiction over the Sabine to its mouth in the sea, possessed only an equal one with Texas. Would the vessels of the United States even then be liable to the exaction as claimed in the present case? The undersigned thinks not. The *terra firma* of the east bank would have as many rights as the *terra firma* of the west bank; and the law of nations respecting the rights of both as equal, would limit the respective jurisdiction of the two countries to the middle of the stream, estimated from the low water mark of the respective banks. So that, if the schooners Louisiana and William Bryan had been anchored on the east side of this line, and had there received from Texan boats their cargoes, it is not

perceived that the right to levy the duties in question could be enforced against the consent of the United States.

The undersigned is willing to admit, but without instructions from his Government on the subject, that a commercial convention between the two countries might be framed, with great advantage to both, which would obviate such grievances as the present. It is but right that Texas should have some convenient mode of preventing the introduction into her territory, on the bank of the Sabine, of foreign productions, without the payment of the duties which are collectable at her ports of entry on the Gulf of Mexico, or elsewhere within her jurisdiction. It is equally important to the United States, that every avenue should be closed, as far as possible, against the receipt into their ports of the productions of Texas, which are now doubtless often shipped to New Orleans, and other points in the Union, without any mode of identifying them by the revenue officers as the growth or production of Texas. The revenue of each country thus suffers; but the existence of such an evil does not confer upon Texas the right claimed for her by the Hon. Mr. Smith, to correct it upon her own terms, without the consent of the United States and in defiance of their jurisdiction over the waters of the Sabine.

The undersigned indulges the hope that the views he has here expressed, will be satisfactory to the Hon. Mr. Smith and to this Government: So far at least as to make manifest the propriety of issuing such instructions to the collector at Sabine, as will prevent the recurrence of similar grievances to the one complained of. Pending the consideration of the proposals, now before this Government for cementing the relations of the two Republics, by the bonds of a common union, it is particularly desirable that no differences of this nature should occur to disturb the feelings or prejudice the interests of the citizens of either country. And if the undersigned has created even a doubt in the mind of this Government, relative to the justice of the claim maintained for the collector, in regard to those tonnage duties, he tru[s]ts that for the present at least, its enforcement will not be attempted.

He has the honor to express to the Hon. M. Allen assurances of the high respect and regard, with which he is his most

obt. hbl. servt.,

A J DONELSON

Hon. EBENEZER ALLEN,

*Atty. Gen. of the Republic of Texas, and Sec'y of State
ad interim etc., etc., etc.*