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Message from the President of the United States, communicating in compliance with a resolution of the Senate, further correspondence growing out of the treaty of Washington of July 4, 1850

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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

COMMUNICATING

In compliance with a resolution of the Senate, further correspondence growing out of the treaty of Washington of July 4, 1850.

JANUARY 3, 1854.

Ordered to lie on the table, and be printed.

TO THE SENATE OF THE UNITED STATES :

I transmit to the Senate a report from the Secretary of State, with accompanying papers, in answer to their resolution of the 12th inst.

FRANKLIN PIERCE.

WASHINGTON, *December 31, 1853.*

DEPARTMENT OF STATE,
Washington, December 31, 1853.

The Secretary of State, to whom was referred the resolution of the Senate of the 12th instant, requesting the Senate to inform that body "whether any communication has been received from the British government, or any correspondence taken place with it on any subject growing out of the treaty of Washington of July 4, 1850, since the message of the President of the United States of January 4, 1853, made in answer to a call of the Senate of December 30, 1852; and if there has been any such communication or correspondence—and also copies of all instructions to our minister in England, and of all correspondence in relation thereto—he is requested, if compatible with the public interest, to transmit copies of the same to the Senate," has the honor to lay before the President the papers mentioned in the subjoined list.

Respectfully submitted,

W. L. MARCY.

TO THE PRESIDENT OF THE UNITED STATES.

List of accompanying papers.

Mr. Crampton to Mr. Marcy, May 19, 1853.

Mr. Harding to the Earl of Clarendon, April 15, 1853.

Mr. Crampton to Mr. Marcy, December 15, 1853.

Lord Clarendon to Mr. Crampton, April 29, 1853.

Same to same, May 27, 1853.

Mr. Marcy to Mr. Ingersoll, June 9, 1853.

Lord Clarendon to Mr. Crampton, July 22, 1853.

Mr. Crampton to Mr. Marcy.

[Private and confidential.]

BRITISH LEGATION,
Washington, May 19, 1853.

MY DEAR SIR: With reference to our conversation, yesterday, I enclose, for communication to the President, a copy of the dispatch from Lord Clarendon, which I had the honor to read to you, in regard to the Central American question.

I also send you a copy of the opinion of the queen's advocate, in relation to the construction of the 1st article of the treaty of April, 1850, of which I spoke to you.

I would desire that the communication of these papers should be regarded, for the present, as confidential.

In compliance with your wish, I send you all the documents of which I am in possession in regard to the proposed canal, from ocean to ocean, by the Isthmus of Darien; these are, the engineer's report, his journal, a map of Central America, with notes and a prospectus of the company.

Believe me, my dear sir, with much respect, yours very faithfully,
JOHN F. CRAMPTON.

HON. W. L. MARCY, &c., &c.

Mr. Harding to the Earl of Clarendon.

DOCTORS' COMMONS,
April 15, 1853.

MY LORD: I am honored with your lordship's commands, signified in Mr. Addington's letter of the 7th instant, stating that he was directed to transmit to me a dispatch from Mr. Crampton, her Majesty's minister at Washington, enclosing a report of a speech made in the Senate of the United States by Mr. Clayton, by whom, when Secretary of State for the United States, the treaty for the construction of an interoceanic ship canal between the Atlantic and Pacific oceans, across the Isthmus of Nicaragua, was signed with Sir Henry Bulwer, at that time her Majesty's minister at Washington, and with reference to the construction put by Mr. Clayton upon the 1st article of that treaty, namely, that Great Britain is thereby prohibited from protecting by force of arms any state in Central America, notwithstanding any alliance between her Majesty and either of those States. Mr. Addington is pleased to request that I would report to your lordship my opinion upon the interpretation given by Mr. Clayton to the provisions of that article.

In obedience to your lordship's commands, I have taken the matter into consideration, and have the honor to report, that I am of opinion that the interpretation given by Mr. Clayton to the provisions of the 1st article of the enclosed treaty (convention signed at Washington, April 19, 1850) is in some respects incorrect.

His statement that Great Britain cannot place "an armed soldier on the territory without violating the treaty," is, in my opinion, incorrect;

and I can see nothing in the treaty which affords any foundation or color for such a statement. The first article expressly recognizes the fact, that Great Britain has and may have alliances with, and affords and may afford, protection to States and people in Central America, and only stipulates that neither shall be made use of for the particular purposes therein forbidden, and the maxim of construction "Expressio unius est exclusio alterias" applies to this article.

Great Britain, therefore, may, in my opinion, *protect* any State or people (including Indian tribes) in Central America, even by force of arms, if needful, without violating the treaty, provided only that she, in affording such protection, wholly abstains from occupying, fortifying, colonizing, or assuming, or exercising any dominion beyond her own territory in Central America. Neither does there appear to me to be anything in the treaty which would necessarily prevent Great Britain from sending a fleet or army, if necessary, into any part of Central America, or from conducting any naval or military operations, either aggressive or defensive, and either alone or in alliance with any other nations or States, in any part of Central America. She may certainly do so if she abstains from "occupying" or "fortifying, or assuming or exercising dominion" therein beyond her own territory.

There is not in the treaty any stipulation (for instance) that Great Britain shall abstain from preventing, by force of arms, other nations from occupying, or fortifying, or assuming dominion over any portion of Central America; or that she shall not destroy such fortifications, or subvert such dominion if once established therein.

I understand Mr. Clayton, also, to assert that, by the treaty, Great Britain "has abandoned all dominion in the whole of Central America," which assertion is, in my opinion, incorrect, and at variance with the fact, at least as regards Belize and its dependencies, if, indeed, this exception was not intended by him.

I have, &c.

J. D. HARDING.

The EARL OF CLARENDON, &c.

Mr. Crampton to Mr. Marcy.

WASHINGTON, *December 15, 1853.*

SIR: With reference to our conversation of yesterday, in regard to the construction of the first article of the treaty signed at Washington, on the 19th of April, 1850, I beg to state, in reply to the inquiry you then made of me, that I feel no objection to placing at your disposal the copy of the opinion of the queen's advocate on this subject, drawn up by him for the information of her Majesty's government, and which, at your request, I communicated to you, unofficially, in the course of a conversation which I had the honor of holding with you, on the same subject, in the month of May last.

I would remark, that I was not instructed by her Majesty's government to make any official representation to the government of the United States, with respect to the interpretation given to the first article

of the treaty by Mr. Clayton in the Senate of the United States; the correctness of which, in some respects, is combated by the queen's advocate. As the queen's advocate's opinion, however, constitutes a clear statement of the construction of the article in question, held by her Majesty's government to be sound international law, I can perceive no good reason for withholding it from the official knowledge of the government of the United States.

I avail myself of this occasion to renew to you, sir, the assurance of my highest consideration.

JOHN F. CRAMPTON.

HON. WILLIAM L. MARCY, &c.

Lord Clarendon to Mr. Crampton.

FOREIGN OFFICE,
April 29, 1853.

SIR:—I have received and laid before the queen your dispatch No. —, in which you describe the occurrences which had taken place at Greytown, in the month of February, and in which the commander of the United States ship of war "Cyane" had taken a conspicuous part. Those occurrences, like all recent proceedings connected with Greytown, and the settlement of the Central American question, are of a complicated and not very intelligible nature: but it is unnecessary that I should, at the present moment, enter into a consideration of their details. It will be sufficient to say that her Majesty's government deeply regret what has happened at Greyton, as tending to complicate still further a question already sufficiently embarrassing and difficult of solution.

However questionable in law the retention of the possession of Punta Arenas by the Accessory Transit Company may have been, it is to be regretted that the town council of Greytown should have proceeded to acts of forcible ejection against that company, and, on the other hand, however justifiable may have been the interposition of the commander of the "Cyane" to prevent acts of violence against the company, her Majesty's government cannot but consider that that officer should, in the first instance, at least, have confined that interposition to a warning to the town council of Greytown to desist from those forcible proceedings, under pain of compelling him, if they were persisted in, to interfere by force of arms in protection of the company, until the question of lawful or unlawful occupancy should have been fairly decided. Her Majesty's government have no doubt that Capt. Hollins acted with perfect honesty of intention, and to the best of his judgment, in a situation of much difficulty; but they consider that in landing an armed force and taking actual possession of territory, if not demonstrably belonging to, at least claimed, with every appearance of right, by the *de facto* council of Greytown, many members of which were United States citizens, he acted in a manner not warranted by his instructions. Certain, at all events, it is, that if the commander of an English ship-of-war had acted in similar circumstances like the United States commander, but one

voice of condemnation of such a proceeding would have resounded from one end of the United States to the other.

I have but little doubt that before this dispatch can reach you, you will have expressed an opinion in this sense to the United States government. If you should not, however, have done so, I have to desire that you will, forthwith, in temperate terms, make known the feelings and views of her Majesty's government to the United States Secretary of State; but in so doing you will be careful to say, that under the peculiar circumstances in which Capt. Hollins was placed, her Majesty's government are not disposed to condemn his conduct. They merely wish to express their regret that he should have thought it necessary to put his measures of coercion against the constituted authorities of Greytown to the extent to which he carried them. And they further wish that stringent instructions should be issued to the United States naval commanders on that station, to abstain carefully and constantly from all acts of force which may tend to weaken the authority of the *de facto* government of Greytown, which has been temporarily established by the mutual consent, and under the protection, of the governments of Great Britain and the United States.

But her Majesty's government more especially desires to impress, in the most earnest manner, on the government of the United States, the paramount importance of finally settling the hazardous question of the future position of Greytown and the Mosquito kingdom and Central America generally, a question fraught with embarrassment and even danger, which cannot fail to increase daily so long as the points at issue remain in abeyance.

We have already made the fairest proposals to the United States government for the settlement of this important matter, and we are prepared to carry out those proposals in perfect sincerity of purpose, whenever the United States government may think proper to enter upon the question with us. We the more especially desire that these negotiations should not be delayed, because we have of late but too clearly seen how completely the rights of the question at issue and the intentions of Great Britain, may be misunderstood and misrepresented in the United States, until the matter be finally disposed of by a convention or formal agreement between Great Britain and the United States in concert, if practicable, with the Central American States more nearly concerned in the question, but, if not practicable, without such concert, Great Britain must necessarily retain the position which she has always held with regard to Mosquito, and which the convention of 1850 was calculated and intended, when practically carried out, to modify, but which, as its provisions have not been carried out, it has not as yet altered. Great Britain must also continue under the same conditions to assert the title of Mosquito to those boundaries which have always been claimed by that territory, and in so asserting those boundaries Great Britain must still repel any aggression within those limits which may be committed by Nicaragua, Honduras, or any other Central American power.

But, so far from being desirous of assuming voluntarily this attitude of protector, her Majesty's government anxiously wish to be relieved from so irksome and embarrassing a position by an honorable act of settlement which shall dispose of the question forever.

You will read this dispatch to the United States Secretary of State, or to the President, if desired, and you will urge the President and the Secretary of State to lose no time in meeting our views for finally disposing of a question, which if suffered to remain open, cannot fail to be productive of serious danger to both countries. I am, &c.,
CLARENDON.

No. 36.

Lord Clarendon to Mr. Crampton.

FOREIGN OFFICE, May 27, 1853.

SIR: As great misconception appears to prevail, not only among the people of the United States, but also among persons placed in high and responsible situations in the government of that country, with regard to the true nature of the engagements into which Great Britain entered, by the convention of Washington, of April 19th, 1850, with respect to her present and future relations with Musquito, and the other nations of Central America, and as that misconception, if not immediately corrected, might lead to serious misunderstanding between Great Britain and the United States, I think it highly desirable that that question should, without delay, be put upon its right footing, by a clear and distinct explanation of the view which her Majesty's government takes of it, and of the conduct which they intend to pursue with regard to it.

The article (1) in the treaty which treats of this matter, runs thus: "The governments of Great Britain and the United States hereby declare that neither the one nor the other will ever obtain, or maintain for itself any exclusive control over the said ship canal; agreeing that neither will erect or maintain "any fortifications commanding the same or in the vicinity thereof, or occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, or the Musquito Coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, nor any alliance which either has or may have, to or with any State or people, for the purpose of erecting or maintaining any such fortifications, or of occupying or fortifying, or colonizing Nicaragua, Costa Rica, or the Musquito Coast, or any part of Central America, or of assuming or exercising dominion over the same."

To every stipulation contained in this article, her Majesty's government will faithfully adhere. They will neither seek to obtain any exclusive control over the ship canal if ever formed, nor will they erect any fortification commanding, or in the vicinity of that canal; nor will they occupy, or fortify, or colonize, or assume, or exercise any dominion over any part of Central America; nor will they make use of any protection which they afford or may afford, or any alliance which they have or may have, to, or with any State or people, for the purpose of occupying, fortifying, or colonizing any part of Central America, or of assuming or exercising dominion over the same.

All these engagements Great Britain will religiously keep, as she does not doubt that they will be religiously kept by the United States.

But Great Britain has nowhere in the treaty of April, 1850, renounced, nor ever had any intention to renounce, the full and absolute right which she possesses over her own lawful territories in Central America, such as that designation was distinctly understood and declared by the negotiators of the treaty; nor has Great Britain renounced by the treaty the protection which she has for centuries past afforded, and still affords, to the Mosquito territory. With a view to relieve the question of the Mosquito territory of whatever there may be of indefinite about it, and to place it upon a clear and stable footing, which will be equally advantageous to Mosquito itself, and to all the powers which are in any way connected with or concerned in it, her Majesty's government have already, on many occasions within the last twelvemonths, made overtures of the fairest and most liberal and practical character to the United States government, inviting that government to go hand in hand with the government of Great Britain, in devising and establishing a scheme of adjustment by which the affairs of Central America, Mosquito included, shall be satisfactorily and permanently settled, and the honor of Great Britain, as ancient protector of Mosquito, shall be preserved intact.

Her Majesty's government are still ready and desirous, at any moment, to enter into friendly communication with the United States government on this important matter; and they are of opinion that the sooner such negotiation is opened and terminated the better it will be for all parties concerned, and the greater will be the security for the maintenance of the friendly relations which now so happily subsist between Great Britain and the United States.

But until such settlement be finally concluded it is obvious that Great Britain cannot abandon her present position with regard to Mosquito, nor can she permit either Nicaragua or Honduras to assert, and still less to attempt to establish by force of arms, over any part of Mosquito, a right of possession which Great Britain has always denied, and still denies. And if either Nicaragua or Honduras were still to continue to make aggressions on the Mosquito territory with that object, it must be at their own peril.

Such are the views which her Majesty's government entertain with respect to Central America, as affected by the treaty of Washington of the 19th of April, 1850, and such is the course of conduct which her Majesty's government propose to pursue with respect to that country, and to the various questions which have arisen, or may arise, under the treaty. I will, however, add that her Majesty's government have no intention of disturbing, or departing in any way from, the arrangement entered into between the two governments for the maintenance of the *de facto* government and position of Greytown.

You will read this dispatch to the United States Secretary of State, and you will, at the same time, repeat to him the earnest desire which is felt by her Majesty's government to proceed throughout the whole of this matter cordially and in the most unreserved manner with the government of the United States.

I am, with great truth and regard, sir, your most obedient, humble servant,

CLARENDON.

No. 39.

Mr. Marcy to Mr. Ingersoll.

DEPARTMENT OF STATE,

Washington, June 9, 1853.

SIR: Some days since, Mr. Crampton, her Britannic Majesty's minister, read to me a dispatch of the 29th of April last, addressed to him by Lord Clarendon, her Majesty's principal secretary of state for foreign affairs, relative to the occurrences in March last, at San Juan, (called Greytown in that dispatch.) Having afterwards been furnished by Mr. Crampton with a copy of the dispatch, the President has been made acquainted with the views which it presents. He does not discover in those occurrences, and, if fully known to her Majesty's government, he presumes it would not discover, anything that could give rise to the apprehension of Lord Clarendon, that they tend "to complicate still further a question already sufficiently embarrassing and difficult of solution:" the Central American question. As the President has not seen anything to disapprove in the proceedings of Captain Hollins, on the occasion referred to, he has instructed me to communicate his views to you on that subject, in order that they may be presented to her Majesty's government; and he is quite confident that the transaction at San Juan, when all the facts in relation to it are known, will appear in a light very different from that in which it has been viewed by Lord Clarendon. There is probably some difference of opinion between the two governments as to the right of the Accessory Transit Company to retain possession of Punta Arenas against the people of San Juan. The dwellers at that place were not, when these occurrences happened, and, as the President believes, never were, in actual possession of Punta Arenas; nor, as the case is understood here, have they any title to it, or any right to disturb that company in the occupancy thereof.

If this point of land is within the territorial limits of Nicaragua, as that republic claims it to be, the right of the Accessory Transit Company can hardly be drawn in question. It is derived from an express grant in their charter from the government of Nicaragua. If, on the other hand, it is within the territorial limits of Costa Rica, as that State asserts, the company can retain their possession, as against the people at San Juan, who do not pretend to hold the town of San Juan, or any other property, by grant or permission from the government of Costa Rica.

The United States cannot recognise as valid any title set up by the people at San Juan, derived from the Mosquito indians. It concedes to this tribe of indians only a possessory right—a right to occupy and use for themselves the country in their possession, but not the right of sovereignty or eminent domain over it.

It is not now made known, for the first time, to her Majesty's government, that the United States denies that these indians have any sovereignty over the country they occupy. Our government does not make—nor does it perceive any good reason for making—any distinction between this tribe of savages and those which occupied parts of

our territories, or the territories of the British provinces in North America. I am aware that her Majesty's government regard the Mosquito Indians as an exceptional case to the rule generally acted on by itself, as well as other nations; but in this claim the United States has never acquiesced. It is not proposed, on this occasion, to discuss this question; for, however decided, it cannot change the aspect of the transaction alluded to. It is not probable that any attempt will be made to claim for the people at San Juan any authority over Punta Arenas—derived from the Mosquito Indians, even if it were possible to invest them with sovereign authority over the country they have occupied. Punta Arenas, it will be recollected, is on the southern bank of the river San Juan. At the time when the Accessory Transit Company took possession of it, there was scarcely the foreshadowing of a pretension to a claim for these Indians to any territory whatever on the south side of that river.

With such a title, and actual possession under it, by the Accessory Transit Company, the extraordinary proceedings of the people at San Juan to destroy the company's property at Punta Arenas seems to me to deserve no countenance from any quarter; nor does the assistance rendered to the company, being composed of citizens of the United States, by the commanding officer of one of our national vessels, merit rebuke or require justification.

I am quite sure her Majesty's Secretary of State would not have commented as he has upon the transaction, if all the facts had been known to him. The main, if not the only ground of objection presented by her Majesty's government to the conduct of the commander of the *Cyane*, is not, as I understand the dispatch of Lord Clarendon, that Captain Hollins interposed to prevent acts of violence from being perpetrated against the company, "but that he did not, in the first instance, at least," confine "that interposition to a *warning* to the town council of Greytown to desist from those forcible proceedings, under pain of compelling him, if they were persisted in, to interfere by force of arms, in protection of the company, until the question of lawful or unlawful occupancy should have been fairly decided."

Lord Clarendon assumes that no such warning was given; and the omission to give it appears to be the only ground for his animadversions on the conduct of the commander of the *Cyane*. This ground is entirely swept away by the facts of the case. The *warning* to the full extent suggested *was* given to the town council of San Juan, over and over again. The day before that fixed on for the demolition of the buildings on Punta Arenas by the people at San Juan, Captain Hollins, hearing of their intention to commit that act of violence, sent Theodore P. Green, his first lieutenant, on shore, with directions to inform the people of San Juan that if they attempted to carry their resolution to destroy the property at Punta Arenas into effect, he should resist them by force. Lieutenant Green gave this warning to the mayor and common council, while in session at their council chamber. He, in fact, did all that Lord Clarendon suggests as proper to have been done prior to an allowable interposition by an armed force. But Captain Hollins' precautionary steps went much further. In the morning of the same day on which the attempt was made to destroy the property at Punta

Arenas by the people of San Juan, being informed that they did not intend to heed this warning and desist, but were preparing to execute the threatened outrage, he went himself on shore, and in person to the common council, then in session, and notified them "that he should be compelled to put a stop to any depredations they might attempt upon the property of the Accessory Transit Company." Captain Hollins' efforts to prevent the violent proceedings of the people at San Juan did not cease with this twice-repeated "warning;" but, after his return on board of the *Cyane*, he issued a written warning, addressed to the mayor of that place, of which the following is a correct copy:

UNITED STATES SHIP *CYANE*,
Harbor of San Juan del Norte, or Greytown, March 11, 1853.

SIR: After the interview I had with your "honor" this morning, before your honorable council assembled, I have to state, most respectfully, that I cannot permit any depredations on the property of the Accessory Transit Company whose depot is located upon Punta Arenas, at the entrance of this harbor.

I am, very respectfully, your obedient servant,

GEO. N. HOLLINS,
Commander U. S. S. Cyane.

To his HONOR, the MAYOR OF SAN JUAN DEL NORTE, OF GREYTOWN,
Nicaragua.

These facts, when brought to its notice, must, as the President believes, convince her Majesty's government that there is no cause for taking the exception which it has taken to Captain Hollins' conduct at San Juan in March last; they must remove from Lord Clarendon's mind all feelings of regret, and all apprehension that the occurrences to which he refers will, in any way complicate "the already sufficiently embarrassing and difficult question" between the two governments in regard to Central America.

The President considers it to have been the unquestionable duty of the commander of the *Cyane* to afford the protection he did to the Accessory Transit Company against the threatened outrage of the people at San Juan; and he cannot discover anything in the manner of performing that duty to which any exception ought to be taken.

If there be anything in the transactions at San Juan at that time to be regretted, it is the course which the commander of the British steamer *Geyser* saw fit to pursue, in regard to this movement of the populace at that place, a short time previous to that of the 11th March, against the servants and property of the Accessory Transit Company, on Punta Arenas. On the evening previous to the day when an attack upon both was made by a party from San Juan, the captain of the *Geyser* was at anchor in the harbor, and was notified by the company's agent of the intended attack the next day on the property of that company at Punta Arenas; but, instead of interposing to prevent the meditated destruction of it, or to dissuade the reckless men engaged in that project, from an act so outrageous—so likely to lead to violence and civil confusion—he departed temporarily from the port, leaving the servants and

property of the company at the mercy of their assailants. It is reasonable to conclude that, if the kind offices of that officer had been then vigorously interposed, and his departure from the port at that crisis had not given some plausibility to the inference—doubtless unjust towards Captain Wilson—that he did not disapprove of the movement, no force would have been required to prevent difficulties at that or any subsequent period.

It is proper to say, in conclusion, that the President does not authorize me to say in reply to the dispatch of her Britannic Majesty's principle secretary of state for foreign affairs, anything which may be construed into a recognition on his part, of the claim set up by the people at San Juan to sovereign authority in themselves over any territory whatever, or to any municipal or corporate powers, or political organization derogatory to the sovereign rights of either Nicaragua or Costa Rica; nor does he regard any instructions heretofore issued from this or the Navy Department to our naval officers, for the temporary recognition of an authority for the mere purpose of preserving the public peace, and punishing wrong doers, by the anomalous settlement at San Juan as sanctioning the pretensions of the people of that place to be considered a *de facto* government, independent of the state within the territorial limits of which the town of San Juan is situated.

In order to apprise her Majesty's government of the views of the President in regard to the occurrences at San Juan in March last, you will read this dispatch to the Secretary of State for Foreign Affairs, and also furnish him with a copy of it, if a copy should be requested.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JOSEPH R. INGERSOLL, Esq., &c.

No. 62.

Lord Clarendon to Mr. Crampton.

FOREIGN OFFICE, July 22, 1853.

SIR: I transmit to you herewith the copy of a dispatch addressed by the United States Secretary of State to the United States Minister in this country, which, by the direction of his government, the latter gentleman has put into my hands. That dispatch has reference to the recent occurrences at Greytown and Punta Arenas, and to the conduct of Captain Hollins, the commander of the U. States ship "Cyane," on that occasion.

The tone of that dispatch, if not hostile, is certainly not such as her Majesty's government had hoped for from the United States government, after the many fair and friendly efforts which, at some sacrifice of feeling, with respect to the Musquito country, they have for some time past made with the United States government, in order to bring about in concert with them, a mutually advantageous and equitable settlement of the affairs of Central America, more especially in reference to Greytown and the Musquito country.

In justifying the conduct of Captain Hollins in the dispute which occurred in the month of February last, between the Accessory Transit Company and the *de facto* government of Greytown, the United States Secretary of State applies the word rebuke to the representation which, in my dispatch No. 21, of the 29th of April last, I directed you to make on the part of her Majesty's government to the government of the United States on the subject of the proceedings of that officer; but I neither rebuked nor invited a rebuke upon Captain Hollins. I merely pointed out, in temperate language, the erroneous position in which, in my view of the matter, that officer had placed himself; and in order to avoid all danger of future misunderstanding, I requested that stringent instructions might be conveyed to the United States commanders on that station for the guidance of their conduct on similar occasions in a sense different from that pursued by Captain Hollins. That request was grounded on the instructions which were furnished in the spring of 1852, by the British and United States governments to their respective naval commanders in Central America, directing them to support in conjunction, and pending the negotiations for the settlement of the Central American question, the *de facto* government of Greytown. Now that government claimed a right to the Isthmus called Punta Arenas, over against Greytown, on the other side of the mouth of the river San Juan; and on the written request of the Accessory Transit Company, dated the 11th of June, 1851, to the effect that the company desired the use of a portion of the land on the other side of the harbor near Punta Arenas, measuring two hundred feet east to west, and four hundred feet north to south. The government of Greytown had ceded that portion of land to the company at a nominal rent, "until the land in question might be required for the purposes of the Musquito government." This agreement, therefore, clearly shows that the Accessory Transit Company considered the land in question as dependent on Greytown, and that they were bound to evacuate it whenever required by the government of Greytown. They were so required in February last, and refused; and the United States commander not only supported them in that refusal, but landed an armed force to protect them against the authorities of Greytown. It was this act that her Majesty's government considered as opposed to the mutual instructions given, and the understanding entered into in 1852 between the governments of Great Britain and the United States, and they instructed you accordingly to make a representation against it, and to request that fresh instructions might be sent out to prevent a recurrence of such proceedings.

Her Majesty's government fully admit that the conduct of the government of Greytown, in the violent measures which they took for forcibly ejecting the Accessory Transit Company from Punta Arenas, was injudicious and intemperate; and they have made known that opinion to those authorities. But that conduct does not, in the judgment of her Majesty's government, justify the strong measures of coercion adopted by Captain Hollins against the Greytown government. In fact, nothing could, in the opinion of her Majesty's government, warrant either an United States or a British naval officer, under their mutual instructions, in landing armed men from their ships at Punta

Arenas, for the protection of the Accessory Transit Company against the enforcement of the terms of a written agreement by the *de facto* government of Greytown, with which the agreement had been voluntarily made. It was competent to the United States commander to use the most urgent means of persuasion with the government of Greytown, to induce them to desist from their ill-judged course of violence, but not to employ an armed force for that purpose.

Mr. Marcy observes that if, as Nicaragua asserts, Punta Arenas is within the territorial limits of Nicaragua, the right of the Accessory Transit Company can hardly be drawn in question, because they hold their charter from the government of Nicaragua. But the fact of the company having rented Punta Arenas, as above described, from Greytown by a voluntary written agreement, founded on their own application, sets this question at rest, for having acknowledged the right of Greytown, and held under that acknowledgment, the company cannot now turn round, and acknowledge the opposite right of Nicaragua.

Her Majesty's government deeply regret the language which the United States Secretary of State has thought it expedient to employ in his dispatch, in speaking of the Mosquito country and of Nicaragua. Her Majesty's government were necessarily conscious of the light in which the government of the United States had always, and, it is admitted, consistently, viewed the Mosquito country. But the United States government were equally cognizant of the long standing relations of Great Britain with that country, and of the moral impossibility of her abandoning that country and its ruler, after ages of protection afforded to them, without making such terms in their favor as should be consistent with their own fair claims, and with the dignity and honor of the British crown.

Under this well known difference of views, it were the more to be desired that both governments should sedulously abstain from all language calculated to bring that difference more prominently into view; and that they should, on the contrary, employ their best efforts to throw that difference into the shade, and to settle the question at issue in a manner equally beneficial and creditable to both.

I have already stated, in my dispatch, No. 36, of the 27th of May, that, until the general Central American question shall have been finally determined, her Majesty's government must regard the territorial rights of Mosquito, including Greytown, (saving the *de facto* arrangement entered into with regard to the latter,) in the same light in which they have always been regarded by Great Britain; and that her Majesty's government cannot recognize any pretension on the part of Nicaragua or of Honduras to any part of that territory. They must, on the contrary, continue to resist any such pretension. In repeating this declaration, however, her Majesty's government again, and in the most cordial manner, invite the United States government to join with them in devising and carrying out such an arrangement, with regard to the Mosquito country, and Central America generally, as shall both tend to remove any chance of future misunderstanding between two great and kindred countries, and shall also afford a better prospect than now exists of bringing into the pale of political and commercial

enlightenment a vast and noble region lying between the northern and southern continents of America, which, to all practical interests, is now lost to the world.

I am, &c.,

CLARENDON.

J. F. CRAMPTON, Esq., &c., &c.

Letter from Reverdy Johnson, late Attorney General of the United States, giving his opinion on the construction of the treaty of Washington, of July 4, 1850.

JANUARY 3, 1854.

Submitted by Mr. Clayton, and ordered to be printed in connection with the message of the President of the United States, of December 31, 1853.

WASHINGTON, *December 30, 1853.*

MY DEAR SIR: I cannot hesitate to comply with your request to give you my opinion on the construction of the treaty of Washington, of the 19th of April, 1850. Pending the negotiation of this treaty, I exerted myself in personal conferences with Sir Henry L. Bulwer, to bring about an agreement between you and him, and, on several occasions, I had the honor to be consulted by you both, particularly in reference to the declarations made on both sides, at or about the time of the exchange of ratifications.

In the first draft of the first article of the treaty, presented by you for the consideration of the President, the contracting parties were obligated not "to occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America." I thought then, as you did, that these words were sufficient to exclude any nation disposed to observe the faith of treaties, from occupying, fortifying, colonizing, or assuming, or exercising any dominion, under any pretext or for any purpose. I still think so; but I remember well that other gentlemen, who were consulted at the time, desired, from abundant caution, that Great Britain should pledge herself not to make use of any protection which she afforded, or might afford, or any alliance which she had, or might have, to or with any State or people, for the purpose of occupying, fortifying, or colonizing, or of assuming, or exercising dominion over that country. And, in consequence, the provision to that effect was introduced as a part of that article. The object of this was, still more especially to disarm the Mosquito protectorate of Great Britain in Central America.

My own opinion was then, and it now is, that this provision was not at all necessary. You thought as I did. But as it could not possibly weaken the force or effect of the preceding words, and, if effective at all, could only serve to render them more forcible and operative, we did not object to its insertion. If the former words prohibited, as they clearly did of themselves, the doing any of the particular acts specified, an express stipulation that such acts should not be done, by or

under cover of protectorates or alliances, could only operate still more effectively and absolutely to prohibit them.

As one of the advisers of the President, I unhesitatingly gave him my opinion, that the treaty did effectually, to all intents and purposes, disarm the British protectorate in Central America and the Mosquito coast, although it did not abolish the protectorate in terms, nor was it thought advisable to do so "*in ipsissimis verbis.*" All that was desired by us was, to extinguish British dominion over that country, whether held directly or indirectly—whether claimed by Great Britain in her own right, or in the right of the Indians. But our government had no motive and no desire to prevent Great Britain from performing any of the duties which charity or compassion for a fallen race might dictate to her, or to deprive ourselves of the power to interfere to the same extent in the cause of humanity. We never designed to do anything which could enable the enemies of this miserable remnant of Indians to butcher or starve them, and we thought that both Great Britain and the United States owed it to their high character for civilization and humanity to interfere so far in their behalf as to prevent the extirpation of the race, or the expulsion of them from the lands they occupied, without extinguishing, by a reasonable indemnity, the Indian title according to the rules of justice, which have been admitted both by the English and ourselves. But we did intend (and the treaty contains everything for that purpose that could be desired) to prevent the British government from using any armed force, without our consent, within the prohibited region under pretext or cover of her pretended protectorate. And when now reviewing what was done, I say, upon my responsibility as a lawyer, and as the legal adviser of the President at the time, that, in my judgment, human language could not be more properly and admirably selected for the purpose than that which you employed when you signed the treaty. It has been said, but I can hardly accredit it, that Great Britain now contends, in virtue of the phraseology of the last part of the first article incidentally speaking of the protection which either party may use, that the treaty acknowledges the protectorate over the Indians. If so, it equally acknowledges our protectorate over the same Indians, or over Nicaragua, or any State which we may choose to protect. The same words apply to both parties, and it is a bad rule that does not work equally for both. The moment Great Britain threatens with arms to defend the Indians, and claims a right to do so in virtue of the treaty, we may claim, by the same instrument, with equal justice, the right to take arms in defence of Honduras and Nicaragua. But, in my judgment, the treaty, which was meant for peaceful purposes, denies both to Great Britain and the United States the right to interfere by force of arms for any such purpose, or for any other purposes, except by mutual consent. If Great Britain may send an army into Nicaragua to defend the Indians without violating the treaty, which binds her not to occupy that country, then, by the same rule of construction, she may also fortify the whole of Central America, or introduce a colony there under the same pretext. Any adverse possession of Great Britain in Central America, without our consent, is an occupation in violation of her national faith. The construction which would allow her to place an

armed soldiery on the territory, for the purpose of protecting the Indians, would also allow her to assume absolute dominion there for the same purpose, and thus annul the whole treaty.

But it may be said that some other nation may invade Central America, and that this construction would deprive both the contracting parties of the power to defend it. Not at all. Both parties have bound themselves to protect the canal, and all canals and all railroads that can be made, not only in Central America, but in any part of the isthmus which separates North from South America. In virtue of this obligation, it would be the duty of both to resist, by the most effective means in their power, all invasions and other acts hostile to their great and philanthropic common purpose. So, too, injuries or torts inflicted either by the Indians or by any Central American State, upon either American citizens or British subjects, may be punished by their respective governments without violating the treaty; and no one of these states, by means of a convention, which is marked in every line by a devotion to the true principles of commerce, civilization, and equal justice to all men, can escape punishment for her injustice or oppression. This treaty is the first instance, within my knowledge, in which two great nations of the earth have thus endeavored to combine peacefully for the prosecution and accomplishment of an object which, when completed, must advance the happiness and prosperity of all men; and it would be a matter of deep regret if the philanthropic and noble objects of the negotiators should now be defeated by petty cavils and special pleading, on either side of the Atlantic.

As to the declaration of Sir Henry L. Bulwer, and the counter declaration made by you at the time of the exchange of the ratifications, I probably had a better opportunity of understanding the views and objects of both of you than any other. I assisted, by your request, in the arrangement of the phraseology of the counter declaration, dated the fourth of July, 1850, to Sir Henry L. Bulwer's declaration of the 29th of June. By your request, also, I examined Sir Henry L. Bulwer's powers, and conversed with him freely and fully on the whole subject, at the very moment when, in consequence of his declaration, you threatened to break off the whole negotiation.

I remember well that after his declaration was received, there was a period when you had resolved to abandon the treaty in consequence of it; but when Sir Henry consented to receive your counter declaration of the fourth of July, in which you expressly limited the term "her Majesty's settlement at Honduras," to that country which is known as British Honduras, as contra-distinguished or distinct from the state of Honduras, and also confined the word "dependencies" in his declaration to those "small islands" *known at the time to be such*; in which also, while admitting Belize or British Honduras not to be included in the treaty, you disavowed all purpose of admitting any British title even there; in which, too, you declared that the treaty did include "all the Central American States within their just limits and proper dependencies," and in which you expressly stated to him that no alteration could be made in the treaty without the consent of the Senate, and that he was understood as not even proposing any such alteration,—you then consented to exchange upon that counter decla-

ration, which, in your judgment, and in mine too, completely annulled every pretext for asserting that the declarations of the negotiators had altered the convention, or fixed an interpretation upon it contrary to the meaning of the President and Senate. We both considered then, and as a jurist I now hold it to be perfectly clear, that the exchange of the ratifications on that counter declaration was, on the part of the British minister, a complete waiver of every objection that could be taken to any statement contained in it.

In point of law, the declarations of the negotiators, not submitted to the Senate, were of no validity and could not affect the treaty. Both understood that. This government had decided that question in the case of the Mexican protocol, and the British government was officially informed of their decision. The very power to exchange ratifications gave them the same information, and it is absolutely impossible that the British minister could have been deceived on that subject..

I remember well that you steadily refused every effort on the part of Sir Henry to induce you to recognize the Mosquito title. The treaty left us at liberty to recognize the title of Nicaragua or any other Central American State, and left the British government the right to recognize the title of the Mosquito King. On these points the parties agreed to disagree. But the right to recognize is a very different affair from the right to compel others to recognize. The British protectorate was, I repeat, entirely disarmed by the treaty. How is it possible for Great Britain to protect if she cannot "occupy, or fortify, or assume any dominion whatever" in any part of the territory? She is equally prohibited, in my opinion, from occupying for the purpose of protection, or protecting for the purpose of occupation. If she observes the treaty, her protectorate "stands (as you once well said of it in a diplomatic note) the shadow of a name."

With regard to the British colony said to have been established on the 17th of July, 1852, in the islands of Ruatan, Bonacca, Uilla, Barbarat, Helena, and Morat, and designated as the colony of the Bay of Islands, the question whether, by establishing such a colony, Great Britain has violated the treaty of 1850, depends entirely upon facts in regard to which there are different opinions. The only islands known to this government on the 4th of July, 1850, to be dependencies of British Honduras or Belize, were those referred to in the fourth and fifth articles of the treaty of London of the 14th of July, 1786. The fourth article provides that "the English shall be permitted to occupy the small island known by the names of Casina, St. George's Key, or Cayo Cafina," and by the fifth article, they "have the liberty of refitting their merchant ships in the southern triangle included between the point of Cayo Cafina and the *cluster of small islands* which are situated opposite that part of the coast occupied by the cutters, at the distance of eight leagues from the river Wallis, seven from Cayo Cafina, and three from the river Sibun, a place which has always been found well adapted for that purpose. For which end, the edifices and storehouses absolutely necessary for that service shall be allowed to be built." These articles in the treaty of 1786 give us the only knowledge of any small islands, which were, on the 4th of July, 1850, "dependencies" of British Honduras. I repeat, that the counter declaration acknowledges no other depend-

encies of British Honduras but those small islands which were *known* to be such at its date. We knew, indeed, that Great Britain as well as Honduras had laid claim to Ruatan, but we had no information as to the ground on which the former rested her claim. Your reply to Sir Henry L. Bulwer avoided any recognition of the British claim to it, or other allusion to it than could be inferred from the positive assertion that the treaty did include all the Central American States "with their just limits and proper dependencies." If these islands were a part of any Central American State at the time of the treaty, the subsequent colonization of them by Great Britain is a clear violation of it. If, on the other hand, they did not then belong to any Central American State, it would be gross injustice on our part to pretend that the treaty did include them. My impression is, that Ruatan belongs to the State of Honduras, but my knowledge of the facts is too limited to enable me to express it without diffidence.

During the administration of President Taylor, there *was* no new aggression by Great Britain in any part of the isthmus which was not promptly met and resisted. He had firmly resolved by all constitutional means in his power, to prevent such aggression if any should be attempted, considering as he did, that all the passages through the isthmus should be kept free, to enable us to retain our possessions on the Pacific. I pretend to know nothing of what has occurred there since his day, but neither he nor his advisers could be held responsible if the treaty negotiated by his orders has been at any time violated since his death.

I can scarcely suppose it possible that Great Britain intends seriously to interpose her protectorate again to obtain dominion over the isthmus. I am assured that whatever may be contained to the contrary in any dispatches emanating from the British foreign office, of which rumor speaks, the fact is that a portion (represented to be one half) of the claim of the Musquito king has been lately bought up by American citizens, with the concurrence and approbation of the British government, and that negotiations are on foot, with a fair prospect of success, for the purchase by the same persons of the residue of that claim.

Before closing this letter, I would congratulate you and our country on the brightening prospects of a speedy construction of the great work to promote which you have devoted yourself so long and so faithfully. American and English gentlemen of high character have, it seems, interested themselves in the exploration of a canal route indicated by Humboldt across the isthmus at Darien. Their engineers have reported the route from the Savannah river, emptying into the harbor of Darien and the gulf of St. Miguel, on the Pacific, to Caledonia Bay, on the Atlantic, as being certainly practicable for less than seventy-five millions of dollars, and that the harbors on each side are admirably formed by nature for the purpose, being sufficient to contain the navies of the world. The deepest cut on this route, which extends but for a very small distance, is represented to be only about 150 feet, and the whole distance, from a point on the Savannah river, seven miles from the harbor of Darien, where the depth of water is 36 feet, to the noble Bay of Caledonia, is only 33 miles. In consequence of your negotiation the 8th article of the treaty of the 19th of April, 1850, binds both

Great Britain and the United States to protect this route as well as all other canals and every railroad across the isthmus while in or out of Central America. I understand that, pursuing the spirit of the treaty, engineers under the sanction of the government of Great Britain and the United States are now actually engaged in surveying and exploring this Darien canal route, and that we may, during the next year, expect their official reports. American citizens and British subjects are to be equally concerned in the management of the canal. The British exploration, pursuant to the understanding between the two governments, is proceeding on the Pacific, and the Cyane (United States ship-of-war) sailed not many days ago from Philadelphia, for the purpose of aiding in surveying Caledonia bay and exploring the route on the Atlantic side. The protection of New Granada would be indeed utterly insufficient to induce capitalists to undertake such an enterprise; but the joint protection of the American and British governments, secured by the treaty, is held to be ample for the purpose, and under the assurance of that protection it is believed this great enterprise—by far the greatest and most important ever undertaken by man—will be consummated. If completed, the passage to San Francisco from New York will be shorter by, probably, 12,000 miles, and the danger of the Cape avoided. Our country will then become the great depository of the incalculable treasures of the Pacific. Aware, as you probably are, of the facts connected with this enterprise, you cannot but rejoice in the belief that the subject to which you have devoted so much labor, and for which you have incurred so much responsibility, has at length assumed a shape promising the realization of your brightest hopes.

I am, dear sir, sincerely your friend and obedient servant,

REVERDY JOHNSON.

HON. JOHN M. CLAYTON,
United States Senate, Washington.