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United States diplomatic relations with Paraguay 1845-1870

Allan E. Burke

*The University of Montana*

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UNITED STATES DIPLOMATIC RELATIONS
WITH PARAGUAY
1845-1870

by

Allan E. Burke

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INTRODUCTION

The years 1845 to 1870 represent a distinct period in the diplomatic relations of the United States and the Republic of Paraguay. During this quarter century there occurred a series of events, seemingly unrelated, yet, intimately associated.

In writing this thesis, I have endeavored to gather and put together the various incidents forming this period.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I  Edward A. Hopkins and the &quot;U. S. and Paraguay Navigation Co.&quot;</td>
<td>1</td>
</tr>
<tr>
<td>II The &quot;Water Witch&quot; Affair</td>
<td>13</td>
</tr>
<tr>
<td>III The Treaty of 1853</td>
<td>34</td>
</tr>
<tr>
<td>IV Minister Cashburn and the Question of Diplomatic Asylum</td>
<td>57</td>
</tr>
<tr>
<td>Bibliography</td>
<td>89</td>
</tr>
</tbody>
</table>
CHAPTER ONE

EDWARD A. HOPKINS AND THE
"U. S. AND PARAGUAY NAVIGATION CO."

The state of Paraguay was formed in a region which in the seventeenth century had been styled the province of Guira or Paraguay. A portion of that "gigantic province" was later made an intendancy of the Viceroyalty of La Plata,¹ one of the four political divisions established under the Spanish rule. The present states of Bolivia, the Argentine Confederation, and Paraguay composed the Viceroyalty of La Plata.²

On the 25th of May, 1810, a revolutionary movement in Buenos Aires overthrew the Spanish Viceroy. Prompt measures were taken to overthrow all of the other Spanish provincial officers, and to secure the cooperation of all of the other subdivisions of La Plata. An army under the command of Manuel Belgrano, one of the leaders of the movement, was sent to take possession of Entre Ríos and Corrientes for the junta, and to attack the Spanish governor of Paraguay. He took but a few hundred troops, as he believed the people were in sympathy with the movement and would give him aid.³

² Ibid., p. 98, 127.
He encountered no difficulties in Entre Ríos and Corrientes, probably because they were mere administrative divisions of Buenos Aires. The gauchos, who formed most of the population, disliked outside control and cared little who claimed to be supreme at Buenos Aires. The Paraguayans, who hated the Buenos Airesans with "an intensity born of ignorance and isolation," promptly responded to the call of the Spanish governor Velasco. On 19th of January, 1811, Bolívar and his whole force was captured. 4

This battle and the hostile attitude of the people of Paraguay definitely assured Paraguay's independence from Buenos Aires. It was soon realized that independence from Spain had been won as well. 5 The governor had no troops and no hopes of securing any. In May, 1811, a bloodless revolution occurred, Governor Velasco was deposed, a provisional government established, and on June 11, a Paraguayan Congress declared the independence of the country. 6

After 1816, when Francia was made perpetual dictator of Paraguay, he became increasingly despotic. 7 He was convinced that the Paraguayans were not ready for self-government and

6. Dawson, op. cit., I, p. 189
he proposed to save Paraguay from the civil disturbances that distracted the rest of South America. In this attempt he was successful. He absorbed all of the functions of government; he made no confidants; and he allowed no Paraguayan to approach him on terms of equality. His keenest desire was that Paraguay should become self supporting and independent of all other nations. Under his autocratic rule Paraguay was almost completely isolated from the rest of the world, politically and commercially.

He neither received nor sent consuls or ministers to foreign countries. Foreign vessels were excluded from the Paraguay river and allowed to visit only one port in the south-eastern corner of the country. The communistic system was used and developed. The government owned two thirds of the land. Dreading interference by Spain, Brazil, or Buenos Aires, he improved the military forces and began the organization of the whole population into a militia. His policy was peaceful, however, and the difficulty of getting arms up the river past the forces of the Argentine warring factions

prevented his organizing an army fit for offensive operations even if he had desired to have one.\textsuperscript{12}

During his administration the Paraguayans evidently enjoyed a comparatively large measure of economic prosperity. By one method or another he gave an artificial stimulus to agriculture, cattle raising, and primitive manufactures.\textsuperscript{13} During his reign Paraguay remained undisturbed, and the population rapidly increased. Though commerce and manufacturing did not flourish, nor foreign ideas penetrate their barriers, food was plentiful, clothes were cheap, and the Paraguayans prospered in their own humble fashion. Francia lived until 1840 in the full possession of unquestioned supreme power, dying at the age of eighty three years.\textsuperscript{14}

As Francia had not appointed a successor, the government of Paraguay soon passed into the hands of a military junta.  On March 12, 1841, a Congress at Asuncion decided to vest executive authority in the hands of two consuls who should serve for three years. Of these rulers the rising man was Carlos A. Lopez, a lawyer of considerable ability,

\textsuperscript{10} Dawson, op. cit., p. 194.
\textsuperscript{11} Robertson, \textit{Rice of the Spanish American Republics}, p. 172.
\textsuperscript{12} Dawson, op. cit., I, p. 197.
\textsuperscript{13} Robertson, \textit{The Latin American Nations}, p. 272.
\textsuperscript{14} Robertson, \textit{History of Latin American Nations}, p. 272.
the had been living in exclusion. At the request of the
council, an extraordinary Congress of four hundred deputies
met at Asunción in 1865. On November twenty-fifth the
depuities signed a solemn act, stating that Paraguayan inde-
pendence had been a solemn and incontestable fact for more
than thirty years. Furthermore, the republic of Paraguay
was a nation free and independent of all foreign powers,
and would never become the patrimony of any person or of
any family, and that all officials of any type, before
assuming office, should take an oath to defend the indepen-
dence and integrity of the republic.16

In 1866, the Congress of Paraguay assembled again. On
March 12, 1866, Congress approved the project which made
provisions for three departments of government, and vested
large powers in a president who should hold office for ten
years. Upon the following day Congress acclaimed Lopez as
President.17

The new ruler adopted many liberal measures, and among
other things abandoned the policy of isolation and opened
the country in 1866. Permission was given for foreign ships

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   Robertson, History of the Latin-American Nations,
   p. 270-273.
17. T. e b e l, op. cit., p. 100-122.
   Robertson, History of the Latin-American Nations,
   p. 270-273.
   Hareen, op. cit., p. 100-102.
to ascend the Paraguay as far as Asuncion, and foreigners were no longer forbidden to enter the country. On the contrary, Lopez evinced a marked desire for the society of foreigners and encouraged them to come and engage in trade. His manner was engaging and his courtesies untiring. Although, when his will was crossed or his suspicions aroused, he could be very unreasonable and arbitrary. 18

An event of great importance at this time was the arrival at Asuncion June 10, 1865, of Edward A. Hopkins, a representative of the United States. Mr. Hopkins had been appointed special agent to Paraguay to cultivate friendly relations with the country, and obtain the "information necessary to enable the President and Congress to decide whether its independence ought to be recognized by the United States." Mr. Hopkins was not furnished with any letter of credence to the minister of foreign affairs of Paraguay, nor with any power whatever to negotiate or act in a diplomatic character." 19

In his first official communication with the government of Paraguay he told President Lopez that "the next Congress

Dawson, op. cit., I, p. 203.
John Bassett Moore, History of International Arbitra-
of the United States will acknowledge the independence of Paraguay," and forgetting the limitations to his power as a special agent, tendered the good offices of the United States, in his own name, in a quarrel between Asuncion and Buenos Aires. 20

Lopez was well pleased by the promises of Hopkins, for the appearance of a messenger from the United States, bringing him assurance of recognition, was very satisfying. Hopkins also convinced President Lopez that the country could be developed by giving concessions to Americans, who would furnish money to invest in the industries of the country. 21


During the time of the consulate, an attempt was made to obtain the recognition by Buenos Aires of Paraguay as an independent republic. Rosas, the Dictator and tyrant of the country, refused to do this, as he hoped to eventually bring Paraguay under his control. Rosas was unable to make any warlike attack on Paraguay, since he was at war with the Province of Corrientes, but he closed all his ports to Paraguayan commerce, practically excluding the country from the rest of the world.

Dr. Hopkins was "peremptorily recalled," March 30, 1846, when it was discovered that he had "violated his instructions by representing himself to the President of Paraguay as invested with a diplomatic character, by committing the President and Congress of the United States to his favor in recognizing that country, and by offering the mediation of the United States between the Government of Paraguay and Buenos Aires."


In accordance with the plan they had projected, Mr. Hopkins, with the approval of President Lopez, returned to the United States with the intention of forming a company to develop the resources of the country by commerce and manufactures. In this project he had enlisted the interest of certain citizens of Rhode Island, who formed an association in 1852, which was chartered under the title of "The United States and Paraguay Navigation Company." The capital stock of the Company was fixed at $100,000, with liberty, however, to increase it for the general purposes of trade to $1,000,000. 22

The Company purchased a steamer and renamed it "El Paraguay." On the 31st of March, 1853, El Paraguay, loaded with property of the Company, left New York. Unfortunately, the steamer encountered a series of gales, and upon arrival off the coast of Brazil, was forced to stop at the port of Paraná, where the El Paraguay was condemned and she and her cargo sold. A portion of the cargo that was saved was re-shipped to Montevideo, and was forwarded to Asunción on a vessel chartered for that purpose by Mr. Hopkins. A second expedition sent out by the Company on the schooner, E. T. Bloggott, shared a similar fate. 23

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23. Ibid., p. 1425-1426.
25. Thorton, A Digest of International Law, III, p. 118.
Mr. Hopkins arrived in Paraguay in October, 1853, bringing with him the remnants of the cargo of El Paraguay, and "uniting in himself the functions of Consul of the United States and General Agent of the Company."26

Consul Hopkins was cordially welcomed by President Lopez. The point selected for the head-quarters of the company was at a place called San Antonio, about eight miles below Asuncion.25 Hopkins established a sawmill and a cigar factory and commenced operations. A government barracks was put at his disposal, and President Lopez advanced the sum of $10,000 to take care of the immediate wants of the company. Lopez also gave permission for the company to employ as many natives as were needed.26

Things went along smoothly until July, 1854. At that time an event occurred which led to the entanglement of Consul Hopkins and President Lopez. On the 22nd of that month, Mr. Hopkins's brother was riding along the road with a French lady, when they encountered a herd of cattle that were being driven by a Paraguayan soldier. The couple was

24. Ibid., I, p. 361.
requested to stop or stand aside, but misunderstanding the
instruction, rode into the herd. The soldier was enraged
and struck the young man across the face with the flat side
of his saber. 27

Consul Hopkins, upon hearing this, was very angry, and
rudely broke into the presence of President Lopez without
observing the usual ceremonies to which he was accustomed,
demanding redress for the indignity and insult. Orders
were given for the soldier to be given three hundred blows,
but the manner in which Mr. Hopkins demanded satisfaction
gave offence, 28 and from that time the attitude of President
Lopez toward Consul Hopkins changed, and it was alleged the
attitude of Lopez toward the Company was also completely
altered. Complaint was made to the United States Government
concerning Hopkins's conduct, and his consular exequator was
revoked. The land that had been bought by the Company was
declared to have been illegally sold, and the former owners
reclaimed it. The natives were forbidden to work for the
Company, and it was required that the business take out a
license. Mr. Hopkins applied for a license in the character
of "Consular Agent," but his application was refused, so the

27. Ibid., I, p. 1486.
Thomas J. Face, La Plata, the Argentine Confederation,
title was objectionable to the Government. To obtain the license it was necessary for him to apply as "Agent" without the "General." 30

Mr. Hopkins decided, because of the course the Government had taken, to withdraw himself and the members of the Company from the country. 30 At that time, Lieutenant Thomas J. Page, an officer of the United States Navy in charge of the steamer "Water Witch," was exploring the rivers of La Plata. Lieut. Page had been sent by the United States Government in February, 1853, to report upon the navigability of the rivers and the opportunities that they offered for commerce. 31 Mr. Hopkins asked Lieutenant Page to take him and the members of the United States and Paraguay Navigation Company from the country on the Water Witch, and they left from Asuncion on September 29, 1854, abandoning their business and property. 32 This was the beginning of the "Water Witch affair," the facts of which will be related in detail in the next chapter. Mr. Hopkins later

Moore, International Arbitrations, p. 1466-1497.
Tashburn, op. cit., p. 366.
32. 32. Page, op. cit., p. 379.
Moore, International Arbitrations, 1487.
said that he had been expelled and brought suit against the Government of Paraguay. 33

CHAPTER TWO

THE "WATER WITCH" AFFAIR

As previously stated, Governor Rosas of Buenos Aires, who eventually hoped to unite all of the Plata valley under his control, refused, in 1864, to recognize the independence of Paraguay, and had issued a decree forbidding the navigation of the Parana by any but Argentine vessels. By this decree Paraguay was shut from the outside world. Brazil was also affected, as the rivers that start in the northwestern part of her provinces give access to the Atlantic of a large part of her territory. All of the attempts of that country at diplomacy were unsuccessful, and the rivers remained closed.¹

Justo J. Urquiza, Governor of Entre Rios and Corrientes, and one time supporter of Rosas, placed himself at the head of a party favoring the opening of the rivers of La Plata. Urquiza found a powerful ally in Brazil. A union was formed for the purpose of opening the Parana, Uruguay, and Paraguay rivers, with their tributaries, to the commerce of the world. A number of battles were fought, and on February 5, 1862, Rosas was totally defeated and forced to flee.²

¹ Page, op. cit., p. 562-564.
² Dawson, op. cit., 1, p. 200.
Page, op. cit., p. 564.
After the defeat and flight of Rosas, Governor Urquiza was elected Provisional Director of the Argentine Confederation. One of his first measures was a decree issued August 23, 1832, "declaring the free navigation of the rivers of the Confederation, the decrees to take effect the last of October of the same year." Thus the barrier of many rivers offering communication "with the Atlantic to a region of a country embracing not less than 200,000 square miles" was broken.  

The United States was the first nation to take advantage of the opportunity, and in order to get a more extended knowledge of the La Plata, sent Lieutenant Thomas J. Page of the U. S. Navy February, 1833, in charge of an expedition to explore its rivers and report upon its navigability. He was also ordered to penetrate into the countries of La Plata, to examine their agricultural resources, and to make such collections in natural history as his time would permit. He was also given a commission by President Fillmore, "to negotiate individually, or jointly with Lassare, Schonck and Pendleton, Ministers to Brazil and

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Ibid., International Arbitrations, II, p. 1487.
the Argentine Confederation, a treaty of commerce and navigation with the Republic of Paraguay. The Navy Steamer Dacor Cutch, constructed at the Washington Navy yard, was placed under his command.

For a successful and complete exploration of the Paraguay and Parana rivers, it was necessary to obtain from the Emperor of Brazil permission to enter that part of his empire bordering on those rivers. Permission was given at this time for the Dacor Cutch to ascend the Paraguay as high as Albuquerque, a town some distance within the territorial limit claimed by Brazil. On arriving at Concepcion, the first imperial military post on the Paraguay, Lieutenant Page was informed that the privilege of ascending the river had been extended to Corumba, a small post about

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2. Page, op. cit., p. 36.
4. Moore, Digest of International Law, VI, p. 100.
5. Paraguay was recognized as separate and independent April 27, 1868, by the issuance to Mr. John Randolph of Virginia, Charge d'Affaires at Buenos Aires, of a full power to negotiate a treaty of commerce with the Paraguayan Government.
6. Robertson, Economic-American Relations, with the R. S., p. 61.
sixty miles above Albuquerque.7

Upon arriving at Buenos Aires, he visited Mr. Pendleton of Virginia, the representative of the United States government to the Argentine Confederation, and the public authorities of the place. In cooperation with Mr. Schenck, of Ohio, the United States minister to Brazil, who had visited Buenos Aires for the purpose, Mr. Pendleton was engaged in negotiating a treaty with the provisional director of the Argentine Confederation.8

Here, Lieutenant Page was informed by Mr. Pendleton that he had accepted the invitation of Sir Charles Hotham, the British minister at Buenos Aires, to accompany him to Paraguay, where with the ministers of France, and Sardinia, the two men had negotiated a treaty of navigation and commerce with President Lopez on March 4, 1863.9

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8. "Permission was, however, subsequently granted to extend the work throughout the Paraguay, and to any of its tributaries within the empire." This information was received at a time when circumstances beyond his control rendered it entirely impossible for him to act upon it. "An arbitrary decree" of the President of Paraguay forced him to abandon the exploration of the higher water of the Parana and Paraguay with their western and eastern tributaries, at the moment that his labors reached the most interesting point.
9. Ibid., p. 38.
Koebel, op. cit., p. 184.
On May 27, 1855, General Urquiza gave Lieutenant Page the right to explore the rivers of the Argentine Confederation. Lieutenant Page upon leaving Buenos Aires, received from General Urquiza a letter of introduction to President Lopez, in which he alluded to the expedition as a work designed for scientific purposes, and commended it to his favorable consideration.

Lieutenant Page was successful in getting an appointment with President Lopez at the government house the afternoon of his arrival. At the meeting Page explained the objects of the exploration and gave him a copy of the commission from the President of the United States, which he had requested. The President seemed favorably disposed towards the expedition.

Several days later Page again called and presented the President with plans for a smaller steamer that he wished to construct at Asuncion, for the exploration of the smaller tributaries of the river. As the timber industry was a

13. Ibid., p. 118.
Page states that they, "anchored off the town on the 1st of October, and received a visit from the captain of the port." The meeting was probably arranged on the same afternoon.
Page, op. cit., p. 114.
13. Ibid., p. 118.
Dawson, op. cit., p. 118.
government monopoly, this step was necessary. After ex-
aming the plans, President Lopez stated that they would 
be supplied with everything that was needed. 14

In the meantime Page began making preparations for 
continuing the exploration of the Paraguay. Diplomacy was 
necessary in order to obtain the needed permission, for the 
treaty of commerce and navigation, concluded before his 
arrival, had stated that navigation should be limited to 
Asuncion.

President Lopez was of the opinion that giving permis-
sion for the Water Witch to ascend the river would bring 
the same demand from Brazil. Therefore, he was resolved, 
"In the present state of political relations" not to grant 
her the privilege." Page argued that the expedition should 
not be considered in the connection of a "speculative or 
solely trading character." He suggested the possible value 
of its results to science, and also tried to convince Lopez 
that the exploration would "confer a positive and immediate 
benefit" to his own and neighboring countries, while the 
people of the United States, and others at a greater dis-

15. ibid., p. 118.
tance, could be only remotely or incidently interested.\(^\text{16}\)

The point was conceded, and Page was of course, disposed "to put it to the most latitudinous construction; "or in other words to ascend as far as possible in an ocean steamer."\(^\text{17}\)

Page understood from an official paper sent to him relating to the subject, that he could carry the surveys throughout the limits of Paraguay north, for permission was given to ascend to Bahia Negra, which was conceded to Bolivia by both Brazil and Paraguay. From that point the President had no jurisdiction, for Page had already received permission from Bolivia to enter her waters, and from Brazil to ascend to Albuquerque, which was some distance within the empire.\(^\text{18}\)

The expedition left Asuncion, November 7, 1855, and descended as far as Corumba, which was beyond the limits of Paraguay and in the Brazilian province of Mato Grosso.

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There were unsettled questions as to territorial limits on the northern borders between Brazil and Paraguay. President Lopez had issued a decree forbidding the navigation of the river above the capital, with the view of forcing Brazil into terms. In "excluding other nations, without any positive demonstration of hostility toward his Imperial Majesty, he deprived him of his access through the Paraguay to the richest mineral districts of the empire."

Page, op. cit., p. 118.

17. Ibid., p. 118.

18. Ibid., p. 119.
They would have gone farther but for the limitations designated by Brazil. They turned back, and anchored off Asunción, December 20, 1853, where they were coldly received by the Captain of the port, the most important official at Asunción. The Captain was aware that they had entered Brazilian waters and wished to show his displeasure. 19

Due to sickness of the President, Lieutenant Page was unable to get an interview for several days. When an interview was finally granted conversation turned to the extent of the exploration, and the President became excited, saying that it seemed the "Los Portugueses," as he called the Brazilians, had been let in upon him.

So "know," he said, "that the imperial government would demand the privilege accorded to the United States expedition."

Page said, "I think your Excellency takes a mistaken view of the question. Our exploration can not be assumed as a precedent to do more than the expedition has aimed to accomplish, and if Brazil should demand the same privileges it would be absurd. The surveys of the river have been carefully made. The results will be published, and the imperial government will receive the same benefit that any

other might expect."20

He also reminded the President of their last conversation on the subject, and also of the official letter, which he regarded as an abandonment of all objections to his ascending as far as possible.

President Lopez repeatedly assured Fage during this visit, of his high consideration for him "officially and personally;" and from that time their relations "until again disturbed," were of a more friendly and confidential character than they had previously been.21

Shortly afterwards, Lieutenant Fage made preparations for exploring some more of the interior country near Asuncion, leaving February 9, 1856. Upon returning to Ytapi, he found a letter requesting him to return to Asuncion, as United States Consul Hopkins and President Lopez were having difficulties.22

On the morning of Sept. 21, 1856, Lieutenant Fage called on President Lopez, was courteously received, and

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20. Fage, op. cit., p. 300.
22. Ibid., p. 270.

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As stated in Chapter one, the beginning of the difficulty was the assault of Mr. Hopkins' brother by a Paraguayan soldier.

Fage, op. cit., p. 270.
Charton, op. cit., III, p. 115.
discussed the difficulty between the Government and Mr. Hopkins at some length. The soldier had been punished, but he considered the language of Mr. Hopkins as intemperate and insulting, and as a result had withdrawn his remonstrance. President Lopez explained that the American company would be allowed to carry on its operations with the guarantee of protection, but the agent, Mr. Hopkins, was personally obnoxious to him, and he would not consent to his engaging in business in the country. If the other members of the company wished to remain they might do so without any fear of indignities or insult.

Later, Lieutenant Page met Mr. Hopkins by appointment and informed him of the results of the interview. Hopkins stated that the business of the company had been broken up by the action of the government, regardless of all pre-existing agreements; and that he would hold it responsible for the damage, and would make a complaint to the

24. Ibid., p. 271.
25. Ibid., p. 271.
United States. Under the circumstances he wished, with the company, to withdraw from Paraguay, but no native boat could take them, fearing the wrath of the government.26

Page replied, "I will see the president, and if no arrangement can be made for your leaving the country by a trading vessel, I will receive the members of the company and their effects on board the Water Witch and convey them to Corrientes," this being the point at which Mr. Hopkins wished to establish them.27

Lieutenant Page again called on President Lopez stating the apprehensions of Mr. Hopkins, but the President said the captain of the port would secure a vessel so that the Americans could be able to leave. In order to leave Paraguay with their property, President Lopez informed him that they would be "simply required to procure passports," and a "permit" from the custom house for the shipment of their effects and merchandise, all of which they were at liberty to take with them, paying the export duty on such

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27. Ibid., p. 272.
articles as were the products of the country.\footnote{28} All arrangements were satisfactorily made for the departure of the company, when one of its members came on board the Water Witch, stating fresh insults by the Chief of Police.\footnote{29}

Page had a final interview with the President, reminding him of the promises he had given, and stated the new complaint, at the same time informing him that duty obliged him "to watch over the rights of American citizens" whenever he should meet them abroad. The Chief of Police, when called in, denied every word of the charge against him. The President was apparently as well satisfied that his statement was true as Page was of the contrary. However, the two parted with apparently no rupture of their friendly relations.\footnote{30}

Seemingly was Page on the Water Witch before he received another note from Mr. Hopkins, stating that he had asked for a permit to ship the goods, but it had been refused until he should surrender the papers, deeds, etc., which secured to the company certain lands, purchased and paid for. Page immediately sent his clerk to ascertain from the Collector if the permit had been refused on the above...
grounds. The reply was in the affirmative. Page addressed a letter to the Minister of Foreign Relations, stating the facts of the case, repeating the assurances of the President, and told him if the members of the company were not allowed to leave as promised, he would remove them in the Eater Witch. 31

On the afternoon of the same day a verbal message came from the Minister of Foreign Relations requesting the Captain's clerk to call at his office. The Secretary asked him to translate Page's paper. Replying verbally, Page said he must correspond with the government in his own language, and that he could not allow his letters to be translated by anyone associated with him. 32

His notes were returned the following day, with one

32. Ibid., p. 273.

*Accompanying the note in question was one to Mr. Falcon stating that Page had just received permission from Brazil to explore the Paraguay and its tributaries within the limits of that country, and expressing the hope that his Excellency would again allow him to pass through the waters of his territory to reach those of Brazil. This note shared the fate of the others.

Page, op. cit., p. 274.
from the Minister of Foreign Relations, Mr. Jose Falcon, informing Page that the President did not understand English, and asking that they be translated into Spanish, before they could receive proper attention.\textsuperscript{33}

Lieutenant Page, replied that the notion of President Lopez forced upon him the inference that his request had been refused, thus making it imperative to remove the members of the company from Paraguay in the latter Witch. At the same time he informed the Captain of the Port that he would receive the members of the Company and their effects on board and leave Asuncion on a certain hour.\textsuperscript{34}

The permit was issued shortly after the announcement was made, showing that President Lopez must have been informed of the contents of the note, even if he did not read English.\textsuperscript{5} The Americans were in the act of boarding the ship when the permit was issued, but it helped matters as it was accompanied by an order to the Port Captain to give every aid in shipping their goods.\textsuperscript{35} With the Americans on board, the Witch left Asuncion the

\begin{footnotes}
\item[33] Page, \textit{op. cit.}, p. 274.
\item[34] \textit{Ibid.}, \textit{op. cit.}, I, p. 276.
\item[35] \textit{Ibid.}, p. 278.
\end{footnotes}
30th of September, 1854, experiencing no difficulty in leaving the country. 36

On the third of October, 1854, President Lopez issued a decree which excluded all foreign vessels of war from Paraguayan waters, and also stated that the "exploration of the upper Paraguay which embraced the territory of the Republic, or of the neighboring states, could not be made through the lower Paraguay, pending the settlement of limits with the neighboring powers, Brazil and Bolivia." 37

On the 15th of October, Mr. T. C. Buckley arrived in Corrientes in a river steamer, the Buenos Aires. He was bearer of the exchange of ratifications of the treaty of

   This action led to a feeling of antagonism of Lopez against Lieutenant Page.
   Page, op. cit., p. 281.
   Cashburn, op. cit., I, p. 572.
   As previously stated, the permission to explore the waters of Brazil reached Lieutenant Page about this time. However, Paraguay controlled the entrance into their rivers and thus could embarrass any movement that he made.
   Page, op. cit., p. 280.
March 6, 1855, negotiated by Mr. Pondiston, and ratified by the Senate of the United States. He also brought letters from the Secretary of State, Mr. Marcy, instructing Lieutenant Page to propose the exchange. The treaties negotiated at the same time by the Ministero of France, England, and Sardinia had long since been ratified, and their consuls for Asuncion were on board this steamer.

By the decree of the 3rd, the Water Pitch was excluded from entering Paraguayan waters, so Lieutenant Page sent Lieutenant Murdough, on the Eunice Airos, with a note to the Minister of Foreign Relations, informing him that he was commissioned to exchange the ratifications, and asking him where it would be possible to meet a person "duly authorized" by the government of Paraguay. On delivering the paper, Lieutenant Murdough informed José Falcon, the Minister of Foreign relation, verbally of its contents, according to

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33. In this treaty, which was ratified by Paraguay, March 12, there were certain verbal errors, due to the carelessness of the American representatives. Mistaken such as the use of the titles, the "United States of North America," and, "North American Union," instead of the "United States of America" were found. Thirty-two errors in all were corrected by the Senate of the United States, and the treaty as amended was sent to Lieutenant Page, by Mr. Marcy, on the 2nd of June, 1854.

the instructions he had received. 39

The note was returned, with a reply from Jose Falcon stating, that "in accordance with the conditions" of his "previous dates of the 29th and 30th of the past" he was returning the note dated the 16th of October in Corrientes, "written in English;" and astonished that Page should "persist" in the idea of "mortifying" him. 40

Considering that he had made every effort on his part consistent with the proper ratification, Lieutenant Page reported the result to the Department of State. 41c

On the 30th of January, Lieutenant Jeffers was left in charge of the Water Witch and given instructions to ascend the Parana as far as the Island Aipe, a distance of over a hundred miles from its juncture with the Paraguay. With the remainder of his men Page left Corrientes on the 31st of January, 1855, for the Salado River. On the 3rd of February, when they were about two hundred miles below Corrientes, the Water Witch bore in sight, bringing them

40. Ibid., p. 282.

No further attempts at ratification were made until August 5, 1856, when Mr. Richard Fitzpatrick was sent out by the United States as a special commissioner to exchange the ratifications of the treaty.

Page, op. cit., p. 282.
startling news. The Water Witch had been stopped in her
assent of the Parana; fired upon from the Port of Itapiru;
the man in the helm killed, and the steamer slightly
damaged.42

42. Page, op. cit., p. 303-304.
House Reports, 35th Congress, 1st session, No. 365,
p. 2.
Moore, Digest of International Law, VII, p. 110.
Washburn, op. cit., I, p. 373-375.

It seems Lieutenant Jeffers had proceeded but
for a short distance above Corrientes when he was
approached by a boat from the Paraguayan fort on the
Paraguay shore, where there was a flag-staff, but no
flag flying, and presented with a paper. Lieutenant
Jeffers returned it to the messenger, informing him
that he did not read Spanish. Lieutenant Jeffers was
informed by his pilot that the only practical channel
lay close to the fort, on the Paraguayan side of the
river, and so he directed the pilot to take this
channel. On approaching the fort he was hailed by a
person who he was informed was a Paraguayan admiral;
but Jeffers did not understand the import of the
hail. Two blank cartridges were fired from the fort
in quick succession and followed by a shot which
carried away the wheel of the Water Witch and mortally
wounded the helmsman. Lieutenant Jeffers immediately
directed a general fire in return, the action continu-
ing for some minutes. Though the Water Witch was
struck ten times, it was only the first shot that did
any harm.

Page, op. cit. p. 593-596, 304-305.
The whole affair was an "outrage" in the opinion of Lieutenant Page,\(^3\) the information disturbing his plans for the immediate exploration of the Salado. He could not rest under this "insult to our national honor," and he decided to proceed to Buenos Aires or Montevideo, in the hope of procuring from a ship of the United States squadron, two large shell guns which would enable him to return.\(^\star\) Arriving in Buenos Aires, he was disappointed to find that the largest vessels of the squadron, the Germantown, and the Savannah, had left three days before for Rio De Janeiro.\(^4\) Page proceeded to Montevideo, and finding an American clipper bound for Rio do Janeiro, dispatched Lieutenant

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\(^{3}\) Page, op. cit., p. 308.

\(^\star\) Charton, op. cit., III, p. 115 (Charton quotes from Calvo, Droit International, 4th ed. \(\&\) 1868)

\(^4\) Moore, International Arbitrations, II, p. 1466.
Powell with a report of the affair to the Commander of
the squadron, U. D. Salter. Lieutenant Page asked to
have the Government ordered to Paraguay, and at the same
time sent a report of the attack to the Secretary of the
Navy and the Minister Resident at Buenos Aires. The
Commander, however, after a consultation with the resident
minister at Buenos Aires, decided to refer the matter to
the government** and await instructions, at the same time
advising Page to stay from that part of the river until he
received directions.46

This action was very disappointing to Lieutenant Page,
as he believed it was the duty of the Commander to act of
his own accord, in the event of "extraordinary occasions."
This in Page's opinion constituted one of those occasions
where the authority of a commander of a foreign station

** On February 4, 1855, Mr. Jose Falcon sent a dis-
patch to the government of the United States, en-
closing what Page called a "fancy sketch of the river."
He represented the shots fired by the Uster Witch as
a hostile movement against the fort and asked that
the officers in charge be "severely punished."
   Charton, op. cit., III, p. 115.
exceeds even that of the Executive Department.\(^{46}\) The Commander had "the right, the Power," and it was his duty to avenge "all and every outrage committed upon American vessels within the limits of his station."\(^{47}\)

Page remained a few days at Buenos Aires, before entering the Uruguay. Upon his return he started for Montevideo, as all of his work was completed. Here he found his expected letter of recall.\(^{49}\) They left the harbor of Montevideo, February 3, 1856. After an absence of three years and four months the Water Witch came to anchor on the 8th of May, 1856, at the Washington Navy Yard, the place of her original construction.\(^{50}\)

\(^{46}\) Page, op. cit., p. 315-316.
\(^{47}\) Ibid., p. 316.
\(^{48}\) Nothing was done concerning the Water Witch until the Congress of the United States assembled in December, 1857. At that time President Buchanan referred to the relations with Paraguay, and asked that decisive action be taken.


\(^{49}\) Ibid., p. 318.
\(^{49}\) Ibid., p. 450.
\(^{50}\) Ibid., p. 451.
CHAPTER THREE

THE TREATY OF 1855

As previously stated, Paraguay was recognized by the United States, April 27, 1853, and on March 4, 1855, negotiated a treaty of commerce with the United States. Furthermore, we know this treaty contained certain verbal errors which were corrected, and the treaty as thus amended sent by Mr. Marcy to Lieutenant Page on June 2, 1856 with a view to the exchange of the ratification. But Mr. Page had become involved in the controversy between President Lopes and Mr. Hopkins, and the American and Paraguayan Navigation Company, and could not get the government of Paraguay to deal with him.

The matter rested until August 5, 1856, nearly two years later, when Mr. Richard Fitzpatrick was sent out by the United States as a special commissioner to exchange the ratifications of the treaty.¹ Mr. Fitzpatrick was furnished with a letter to the Minister of Foreign Affairs, and was instructed to at all times convey the impression that the President of the United States wished, “to maintain friendly relations with the country,” and hoping that "this

¹. Page, op. cit., p. 268. 
disposition would be reciprocated."

Then Mr. Fitzpatrick reached Asuncion, Senor Nicolas Vacquer, who had succeeded Senor Falcon as Minister of Foreign Relations, asked him to "declare the objects of this special mission to the Government of Paraguay might understand why its complaints against the United States," as a result of the "scandalous hostility and unprovoked outrages" committed by the Senator Fitch, remained unanswered. He also wished to know if the United States was interfering in the "claims for millions of dollars," with which Edward A. Hopkins had thought to intimidate the government of the Republic. Senor Vacquer thought it best to know the intention of the United States in regard to Hopkins and the Senator Fitch, before determining "whether the occasion had arrived" for a "plain and full exchange" of the treaty ratifications. 3

Mr. Fitzpatrick's reply to these queries proved unsatisfactory. The principal object of his mission, he stated, was "to exchange the ratifications of the treaty," and when the ratification was accomplished he considered his mission ended. 4

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4. Ibid., IX, p. 1080-1081.
5. Moore, Digest of International Law, VII, p. 110.
Sonor Vasquez then refused to exchange the ratification of the treaty, but stated that the President of the Republic was "disposed to enter on the negotiations of a new treaty," if the United States should send out a "plenipotentiary with suitable instructions" for the purpose, who also might settle the pending questions.

Mr. Fitzpatrick pointed out the "purely formal character" of the Senate amendments, and urged Sonor Vasquez to comply with his request.

Sonor Vasquez stated that the treaty had been fully ratified by the President of the Republic after its conclusion, and it was not easy for his Excellency to agree to a new ratification under existing conditions. Therefore he considered the correspondence closed. 5

At that time no claim on behalf of the "United States and Paraguay Navigation Company" had been presented to the Republic of Paraguay by the United States. The first memorial of the company to the Department of State bore the date, January 15, 1885, and asked that measures be taken "to enforce the payment from Paraguay of $935,000," the estimated loss of the company, due to the destruction of its business in that country. Secretary of State Hay was "at first prejudiced against" the claim, but the

company kept presenting various petitions and papers. On July 16, 1856, a year and a half after its first petition, Mr. Marcy instructed Mr. Pond, the minister of the United States at Buenos Aires, that the action of Paraguay appeared, "to have been not only unjust and oppressive, but to have produced the loss of a large amount of property;" and that Mr. Fitzpatrick would be ordered "to present to the Paraguayan Government a claim for the damages sustained by its unjustifiable proceedings against the company." In case there was a difference of opinion "as to the character and amount of the indemnity," to which the company was entitled, Mr. Fitzpatrick could "be instructed to investigate the transaction and report thereon to the government." 6

On the 5th of August, when Mr. Fitzpatrick started on his mission, he was instructed that injustice had been done the company by the Paraguayan government, and that was therefore accountable for it. "At the proper time and in the proper manner" he was to make known the views of the United States on the matter, but he was first to propose the exchange of the ratifications of the treaty of March 4, 1853. We know he withdrew without mentioning

the company's claim. 7

The matter was taken up by President Buchanan, in his annual message to Congress in 1857. Then referring to the United States' relations with Paraguay, he stated that decisive action should be taken. The refusal of President Lopez to ratify the treaty of 1855, was a matter of regret to him. The steamer Gatoritch, maintained President Buchanan, was not properly speaking, a vessel of war, and so did not fall in the prohibition against foreign war vessels navigating the Paraguayan rivers. As Paraguay owned but one bank of the river her right to enforce obedience in those waters could not be acknowledged.

Under the circumstances, therefore, he was led to believe that the attack on the Gatoritch was unjustifiable, and called for satisfaction from the Paraguayan Government. "Citizens of the United States, also," he continued, "who were established in business in Paraguay, have had their property seized and taken from them, and have otherwise been treated by the authorities in an insulting and arbitrary manner, which requires redress.

Moore, Digest of International Law, VII, p. 112.

80 On the 19th of November, 1856, Mr. Fitzpatrick stated in a note to Senor Vasquez that his mission was "solely for the purpose of exchanging the ratifications of the treaty," and this being done, he should "consider his mission near the Republic ended."

This will probably be granted if the Executive shall have authority to use other means in the event of a refusal. This is accordingly recommended."8

This recommendation was taken into consideration by Congress,9 and on June 2, 1859, the President approved a joint resolution by which he was authorized, "for the purpose of adjusting the differences between the United States and the Republic of Paraguay, in connection with the attack on the United States steamer Water Witch, and with other matters referred to in the annual message," "to adopt such measures and use such force as in his judgment may be necessary and advisable, in the event of a refusal of just satisfaction by the Government of Paraguay." The sum of $10,000 or as much more as necessary was provided "to defray the expenses and compensations of a commissioner to the Republic of Paraguay" in execution of the joint resolution.10

On the 9th of September, 1859, when Mr. James B. Bowlin of Missouri, was appointed special commissioner,

8. Messages and Papers of the Presidents, V, p. 449.
Moore, Digest of International Law, VII, p. 110.
10. Moore, International Arbitrations, II, p. 1493,
Moore, Digest of International Law, VII, p. 110-111.
Messages and Papers of the Presidents, V, p. 519-520, 685.
steps had already been taken toward fitting out an expedition to accompany him. The President also thought it advisable to send with the United States Commissioner, a naval force sufficient to exact justice in case negotiations failed. This consisted of nineteen vessels, large and small, carrying twenty-five hundred sailors and marines, under the Command of Commodore Shubrick. The expedition first went to Montevideo. Commissioner Boulin and Commodore Shubrick left Montevideo, on the 20th of December, 1858, and began to ascend to Asuncion in the steamer Fulton, accompanied by the Water Witch. The other vessels remained in the Parana river, near Rosario, from where they could quickly proceed if they were needed. 11 Commissioner Boulin arrived at Asuncion on the 23rd of January, 1859, and successfully accomplished the objects of his mission. He took leave of the President of Paraguay on the 10th of February, and on the 17th of the same month started for the United States. 12

In his annual Message of December 19, 1859, President Buchanan announced that, "all our difficulties" with the President of Paraguay "had been satisfactorily adjusted."

Moore, Digest of International Law, VII, p. 1.
Messages and Papers of Presidents, V, p. 560.
that, "the President of that republic, in a friendly spirit, acceded promptly to the just and reasonable demands of the Government of the United States," and that the treaties concluded by Mr. Boulin could be immediately submitted to the Senate. 13

President Buchanan spoke of a treaty of commerce and navigation, and a convention for the settlement of the claims of the United States and Paraguay Navigation Company. In the case of the Water Witch, Mr. Boulin received, "ample apologies," and the payment of $10,000 for the family of the seaman (Cheney) who was killed at the wheel. Mr. Boulin was given instructions by the Company to settle for the sum

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Moore, Digest of International Law, VII, p. 111.
Warton, op. cit., III, p. 112.

Treaties, Conventions, International Acts, Protocols and agreements, between the United States of America and other Powers, 1776-1869, compiled by William Halloy, (2 vols., Washington, D. C., 1910) Vol. II, p. 1868-1869 contains both of these treaties. The treaty of Friendship, Commerce and Navigation was concluded February 4, 1859; ratification advised by Senate February 27, 1859; ratified by the President March 4, 1860; ratifications exchanged March 4, 1860; proclaimed March 12, 1860. (Halloy, II, p. 1564)

The claims convention was concluded February 4, 1869; ratification advised by Senate February 16, 1860; ratified by the President, March 7, 1860; ratifications exchanged March 7, 1860; proclaimed March 12, 1860. (Halloy, II, p. 1562)
of $800,000 if he were able to do so. In case he could not settle for that amount permission was given to leave the question to an "impartial tribunal," but as "an indis-pensable preliminary," the Paraguayan Government must "ac-
knowledge its liability to the Company."\(^{14}\) Mr. Boulou was unable to collect this amount as President Lopez would pay but $250,000, not because he considered himself liable, but because he wished to "purchase his peace."\(^{15}\)

Thereupon Mr. Boulou concluded on the 4th of February a convention by which the two governments agreed, "to come to a definite understanding," by referring the question to a commission.\(^{16}\) The meeting was to be held in Washington.

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\(^{16}\) Ibid., p. 1484-1485.


The convention declared that the two governments, desiring "to come to a definite understanding" as to the "mode of settling" the "pending question" of the claims of the company, had "agreed to refer the same to a special and respectable commission, to be or-
ganized and regulated by the convention hereby estab-
lished between the two high contracting parties."

By article I the "government of the Republic of Paraguay" bound itself for the responsibility in favor of the "United States and Paraguay Navigation company" which a "right, result from the decrees of the commissioners," appointed as provided for in the second article.

(Continued on Page 43)
II. By this article the high contracting parties, "appreciating" as they said, "the difficulty of agreeing upon the amount of reclamation to which the said company may be entitled, and being convinced that a commission is the only equitable and honorable method by which the two countries can arrive at a perfect understanding thereof," agreed that each country was to appoint a commissioner. In case these commissioners disagreed, an umpire was to be chosen by them, or in case they could not agree as to his selection, the diplomatic representatives of Russia and Prussia at Washington were to select one. "The two commissioners named in the said manner," the article further provided, were to "meet in the city of Washington to investigate, adjust, and determine the amount of the claims of the above mentioned company, upon sufficient proofs of the charges and defences of the contending parties."

By article III it was agreed that the commissioners should take an oath that they would "fairly and impartially investigate the said claims, and a just decision thereupon render, to the best of their judgment and ability."

By article V the Government of Paraguay bound itself to pay in Asuncion, thirty days after presentation, the draft which the United States "shall issue for the amount for which the two commissioners concurring, or by (sic) the umpire "should" declare it responsible to the said company."

Mooring, Arbitration Treaties, p. 45-49.
By an act of Congress passed to carry the convention into effect, and approved May 16, 1860, the President was authorized to appoint, with the advice and consent of the Senate, a commissioner, whose duty it should be, "Conjointly with a commissioner, appointed by the Government of Paraguay, to investigate, adjust and determine the amount of the claims of the United States and Paraguay Navigation Company against the Government of Paraguay," and also in the same manner to "appoint a secretary to said commissioner, in behalf of the United States, versed in the English and Spanish languages." 17

President Buchanan appointed Mr. Cave Johnson, of Tennessee, to act as commissioner for the United States. Mr. Johnson, by profession a lawyer, had served on the bench and in Congress and had held the position of Postmaster-General in the Cabinet of President Polk. Samuel Card was appointed by the President as secretary and interpreter of the commission. Don Jose Bergos was delegated by President Lopez to represent the Republic of Paraguay. 18

The commissioners held their first meeting in one of the rooms of the Treasury Department in Washington, on June 22, 1860, where with the secretary, they exhibited their

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18. Ibid., II, p. 1696.
commissions, after which they took an oath before a Judge of the Courts of the District of Columbia, to fairly and impartially investigate the claims and render to the best of their abilities, a just decision. Mr. Card swore faithfully to discharge his duties as secretary and interpreter. 19

Necaro. John Appleton and C. S. Bradley appeared as counsel for the company, and Mr. J. Nandeville Carlisle as counsel for the Republic of Paraguay. 20

The second meeting was held on the 25th of June, when Mr. Appleton, on the behalf of the claimants, made the opening statement. He said that the persons forming the company were given "special inducements" by the Government of Paraguay. These special inducements, stated Mr. Appleton, were "the public decrees and laws of Paraguay, which invited foreigners to develop her resources by the offer of grants or privileges in the nature of patent rights for a term of years," to persons who should first bring into the country new implements, machinery, or manufacturing processes.

He filed with the commission a copy of the laws in question together with a translation. The laws bore the date May 20, 1845, and in substance granted a patent right on induc-

Cashburn, op. cit., I, p. 386.
trial inventions for a term of years, and extended a similar privilege to persons who first introduced into the country foreign discoveries. Mr. Appleton claimed that these laws had been interpreted by Mr. Gelly, Secretary of State of Paraguay, as applicable to an enterprise similar to the United States and Paraguay Navigation Company. To prove his point, he filed with the commission a copy and translation of a letter written by Mr. Gelly to Mr. Hopkins on December 15, 1843, while Mr. Gelly was at Rio de Janeiro on a special mission. Mr. Hopkins had previously written a letter to Mr. Gelly in regard to establishing a school of practical agriculture in Paraguay, and also commence a business enterprise. Mr. Gelly, in reply, stated his belief that President Lopez would "concede" some land for the purpose, and "except...", the "school from all taxes and imposts." He also expressed the opinion that the proposition made by Mr. Hopkins to "obtain an exclusive privilege or monopoly" on certain branches of agriculture could not be granted. The decree of May 20, 1845, had, he said, regulated this subject, and it "would neither be just nor possible to make an exception" in Mr. Hopkins's favor; but if Mr. Hopkins would "introduce into the country, machines or new means of industry," which it did not already possess, the "decree" would give him a "monopoly for ten years at least," and he would not
"require a special concession." Dr. Gelly also expressed the opinion that there was a promising opportunity for success in any kind of enterprise and speculation in Paraguay of an "agricultural or commercial" character, but discouraged the idea of attempting manufacturing on an extensive scale.21

By the inducements mentioned, the company was led to "commence its enterprise" and establish between the United States and Paraguay, "a great and permanent business."22

Arbitration of the American and Paraguay Co. Case

Though the company had scarcely commenced operations before being disrupted, the "actual expenditures and losses amounted to with interest," said Mr. Appleton, after deducting all returns, amounted to £402,920.57. This expenditure was chiefly for the cost and equipment of steamers that were sent there, for machinery and implements and for salaries and wages. A portion of the loss, arose from the "sale" of "bonds at less than par... after the hopes and credit of the company" was depressed by "the action of Paraguay."23

Not only was money lost, continued Mr. Appleton, but

"Intelligence, investigation, time, enterprise, risk, and anxiety, and these things went to make up the actual investment which created the company's position." It would be difficult to specify the total expenditures of the company, however, so the amount of damages must be determined by the tribunal.

Another basis of the claim arose from the "destruction of grants made by the law of Paraguay, in the nature of patents for machinery and processes first introduced into that country." These included a brick machine, the first and only steam mill, and various other machines, many of which were previously unknown.

These things were cited as but illustrations of the company's rights, the value of which might, said Mr. Appleton, be left to the judgment of the commission. In addition to these things, the claimants were entitled to "a reasonable allowance for the expense of procuring redress for their wrongs; to compensate for time, labor, anxiety, and suffering expended and incurred in their enterprise; to damages for their expulsion; and finally, to compensation or an equivalent for the patent right, grants, and franchises bestowed upon the company by the law of Paraguay, all of which were abrogated by the

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wrongful acts of President López." The award of the
commission should exceed the sum of a million dollars.²⁶

The rules adopted by the commission provided that
a formal statement of the claims of the United States and
Paraguay Navigation Company should be followed by a simi-
lar statement on the part of Paraguay. This statement
was presented by Mr. Carlisle. He first denied the
claimants had in any way been wronged or injured by the
Republic of Paraguay. Any inducements held out by the
Republic, were to be found, he said, in its general laws,
and it was denied that the company had acquired any rights
of patent or monopoly for any term under those laws or in
any manner whatever. The laws prescribed the specific
and appropriate evidence of such right, upon which along
could they have exercised or enjoyed. The letter of Mr.
Gelly was admitted to be genuine, but Mr. Carlisle denied
that he was ever Secretary of State or that he ever held
any office under the Government of Paraguay, except that
of special commissioner to settle a boundary dispute be-
tween that republic and Brazil. Therefore, the letter must
be considered as private, and not expressing any view of
the Republic of Paraguay.²⁷

²⁷. Ibid., II, p. 1490.

Washburn, op. cit., I, p. 385.
Mr. Carlisle also denied "that the agents of the company were expelled from Paraguay," or that the company's business was "interrupted or disturbed otherwise than in due execution of the laws of the land" to which the claimants were subject. On the other hand, "extraordinary favors were extended to Mr. Hopkins and the company" until they had trouble with the government. 28

He further insisted that if the Republic of Paraguay were found liable, that the amount of damages be awarded upon clear and distinct proof that they were actually sustained. Neither could "prospective, conjectural," or "speculative Damages" be allowed in any form; nor could the estimate of damages be affected by "the amount of outlays made in the United States," the results of which never came within the territory of Paraguay. Still less could compensation be made for "intelligence, enterprise," and "anxiety of mind generally." The first and second items in point of magnitude in the company's claims were, said Mr. Carlisle, for the two vessels El Paraguay, and the E. T. Blodget, that were wrecked before reaching their destination and never came within Paraguayan jurisdiction. Nor was it perceived how the Republic of Paraguay could be held responsible for any company losses arising from the

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colling of bonds issued at less than par. Proofs would, said Mr. Carlisle, be offered of the importations actually made by the company and of their value and disposition. It would also be shown that the sum of $10,000 had been loaned to Mr. Hopkins for company use by President Lopez and that sum remained unpaid, except so far as the value of the property abandoned by the company might be applicable to it. The "lands" which figured so largely in the complaints of the company could be shown to have been procured upon a void title for the price of $70 or $90. It would also be shown that the value of the cigar factory was insignificant, that the sawmill had not been a paying proposition, and that the whole enterprise, even in the hands of a judicious and skillful agent, could never have realized the enormous profits which the commission was asked to consider as having been taken from the claimants.

The taking of testimony commenced at the third meeting of the commission. Witnesses for the company and for Paraguay were produced and examined, and various written proofs were filed by both sides. Hearing of witnesses and the filing of evidence were concluded at the sixteenth session of the commission. On July 19, Messrs. Appleton and Bradley submitted an argument for the claimants.

"That the said claimants, "The United States and Paraguay Company," have not proved or established any right to damages upon their said claim against the government of the republic of Paraguay; and that, upon the proofs aforesaid, the said government is not responsible to the said company in any damages or pecuniary compensation whatever, in all the premises.

"In testimony whereof, the said commissioners have hereunto subscribed their names and directed the attestation of the secretary and interpreter the day and year aforesaid.

"C. Johnson,

"Commissioner on the part of the United States.

"Jose Borges,

"Commissioner on the part of the Republic of Paraguay.

"Attest:

Samuel Ward,
Secretary and Interpreter.

Mr. Johnson's concluding observations were as follows:

"It should be a source of gratification to the government of the United States, as well as its citizens, that Commodore Boulioin, after having received prompt and full satisfaction for the insults offered the flag of the United States and the injury done to our citizens on board the Sator Nitch, consented to a reference of this pecuniary demand of the United States and the Paraguay Navigation Company to arbitration, there justice would be more likely done to the parties, than by an attempt to coerce the payment of such claim with musket and sword.

"It has been painful to observe, in the course of this examination, the ingenuity displayed in making so strong a case prima facie for the consideration of Congress and
the executive government, founded upon expert representations of those most deeply interested in the claim, by a studied perversion of the laws and decrees of the republic of Paraguay, and by the enormous, if not criminal exaggeration of the demands of this company, constantly growing larger by the skillful preparation of their accounts, and the studied and malignant assaults upon the President and people of Paraguay, and that, too, for the mere purpose of putting money into the pockets of those claimants.

"It has always been the pride and glory of the government and citizens of the United States 'to submit to nothing wrong' from any government or people, but at the same time to demand of them 'nothing but what is right'; and the day is far distant, as I sincerely hope, when East India Fortunes are to be accumulated, with their approbation and sanction, by the plunder of feeble states, extorted from them at the cannon's mouth.

"For the reasons above given, I am clearly of opinion that the award should be in favor of the republic of Paraguay, and against the claimants, who have not established any right to damages upon their claim.

"All of which is respectfully submitted."

"C. Johnson.

"Washington, August 10, 1860."

President Buchanan was displeased with the result of the arbitration and on February 12, 1860, sent a message to Congress stating, "I herewith submit to the Senate, for their advice, the proceedings and award of the

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commissioners that, The United States and Paraguay Company have not proved or established any right to damages upon their said claims against the Government of Republic of Paraguay, and that upon the proofs aforesaid, the said Government is not responsible to the said company in any damages or pecuniary compensation whatever in all the premises.\(^\text{52}\)

Going further the President said, "the question arises, had the commissioners authority under the convention to make such an award, or were they not confined to the ascertainment of damages which the company had sustained from the Government of Paraguay."\(^\text{53}\)

\(^{52}\) Messages and Papers of the Presidents, V, p. 664.
Ibid., V, p. 663.

\(^{53}\) "By article one the Government of Paraguay "hinds itself for the responsibility in favor of the United States and Paraguay Navigation Company which may result from the decrees of the commissioners." The first paragraph of the second article specifies that the object of the convention was not to "determine" the existence of, but, "the amount, of said reclamations." The act of Congress of May 16, 1860, employs the same language that is used in the convention, "to investigate, adjust and determine the amount" of the claims against Paraguay. The American commissioners in Buchanan's opinion took the wrong view of his powers under the convention. The President, however, did not doubt Mr. Johnson's integrity.

Messages and Papers of the Presidents, V, p. 665-666.
President Buchanan's view on the convention.
The complete arbitration treaty may be found in:


\(^{53}\) Messages and Papers of the Presidents, V, p. 664.
This case appeared to him to be of that character, and for that reason he deemed it advisable to submit the whole subject for the consideration of the Senate. 34

President Buchanan’s message to the Senate of February 12, 1861, was referred to the Committee on Foreign Relations; and on March 12, 1861, Mr. Sumner moved that the committee be discharged from further consideration of it. 35

34. Messages and Papers of the Presidents, V, p. 662.
CHAPTER IV

MINISTER CASEBURN AND THE QUESTION
OF DIPLOMATIC ASYLUM

On July 8, 1861, President Lincoln nominated Charles A. Cashburn as Minister to Paraguay. Dr. Cashburn left the United States on the 27th of July, 1861, and reached Asuncion on the 14th of the following November. Among the matters in his charge was one pertaining to the claim of the United States and Paraguay Navigation Company, which he was instructed to submit to the Government of Paraguay, with the view of settlement. At first President Lopez seemed inclined to discuss the matter, but afterwards would not reopen the claim. Here the case rested for a number of years. The Government of the United States became involved

2. Ibid., p. 1542.
House Reports, 41st Cong. 2nd Session, Report No. 65, p. II.

The case of the company was directed to the attention of the United States in 1870, while the allied troops were in possession of Paraguay, but Mr. Fish, the Secretary of State, said it would be useless to push the case at this time. The claims of the American and Paraguay Navigation Company were again presented in 1885 and 1887, but to no avail. A final claim was made on the 2nd of March, 1888. The press made strong attacks on Mr. Hopkins, and public opinion was so bitter, that the Paraguayan Government refused to reconsider the case.

in a Civil War, and President López died September 10, 1862, being succeeded by his son, Francisco Solano López, who during his career plunged his country into the Paraguayan war.

On the 16th of January 1865, Mr. Washburn took leave from Paraguay to return to the United States for a short visit. He left New York on the 6th of September, 1865, and should have reached Asuncion by the middle of October, but was hindered and delayed in the military lines of the allies who were at war with Paraguay.* Mr. Washburn reached his destination on the morning of November 9, 1865, fourteen months and two days having elapsed since leaving New York.**

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* "Some time in March or April, 1865, after Mr. Washburn had left Paraguay, a war broke out between Paraguay, on the one hand, and Brazil, Uruguay, and the Argentine Confederation, known as the 'allied forces,' on the other hand."

House Reports, 41st Cong., 2nd Session, Report No. 65, p. II.

** Then Mr. Washburn arrived at Rio de Janeiro, he found the Plata blockaded and all ordinary communication with Paraguay cut off. He called upon Admiral Godon, in charge of the South Atlantic squadron, and asked for a vessel which could enable him to proceed to his destination without "unreasonable delay." Admiral Godon refused to do this and Washburn became involved in a long controversy before he was allowed to go through the blockade.

House Reports, 41st Cong., 2nd Sess., Report no. 65, p. II.
Cashburn was in Asuncion but for a short time when he received several dispatches, one from Secretary of State Seward, and the other from General Asboth, United States Minister at Buenos Aires. Mr. Seward’s dispatch was concerned with an offer of mediation on the part of the United States, to bring about a cessation of hostilities in case the offer was well received. General Asboth stated in his letter his intention of informing the Argentine government of the friendly disposition of the United States.5

As Mr. Cashburn received no more correspondence for several months, he decided to visit the allied camp to see what had been done concerning the mediation. The Paraguayan government was in favor of peace and gave him permission to follow his instructions whether "collective or separate" from the Minister at Buenos Aires.6

On the 11th of March, Cashburn went through the allied lines and interviewed the Marques de Caxias, commander in chief of the allies. The Allies, stated the Marques, "would never treat with President Lopez; would never begin to do it; that they would accept nothing from him in any way except on the condition that he leave the government and the country; that the offer of mediation, by the part of General

6. Ibid., p. 714.
Asboth on the part of the United States Government had not been accepted, nor would any mediation as between them and Lopez be accepted. 7 Several days later Mr. Cashburn received a letter from General Astoth, stating that the offer of mediation had been refused. 8 Thus all attempts for reconciliation failed.

As the war progressed it became evident that the evacuation of the town might be ordered. On October 14, 1867, Mr. Cashburn wrote to Mr. Seward, Secretary of State, "should the evacuation of the town be ordered, . . . it is doubtful whether the foreigners will or will not be permitted to remain. If they are not, I apprehend that many will ask admission to my premises and request protection, which it would be hard to refuse and might be embarrassing to grant. As against the enemy, however, I have not hesitated to say that this legation will give whatever protection it can to whoever, save notorious criminals, may resort to it in time of danger." 9

Replying on January 14, 1868, Mr. Seward replied,

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"Your determination to remain at your post of duty as long as you can be of assistance to your countrymen is highly com"mended." "Your intention to afford an asylum in the legation to those who may resort to it, save notorious criminals, as far as can be done without compromising your neutral character or that of your country is approved."10

On the 18th of February, Cashburn was asked by Senator Berges to call at the government house, where he received the information that the ironclads were approaching, that the town was to be made a military post, and that everyone, natives and foreigners alike, were to leave.

Cashburn, however, refused to leave until ordered by his government, as he was of the opinion that the government had no right to compel foreigners to abandon their interests merely by proclaiming the point a military post. He did believe it had the right of declaring the city a military post as the capital was to be moved to Laque, a small village about ten miles inland.11

Cashburn upon returning to his house found many people waiting there. Knowing that he intended to stay, many

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asked for shelter, while others requested to leave their valuables there. Minister Washburn granted them the shelter of his house for their valuables, but could not promise them all housing facilities. About thirty people in all were taken in, including two Americans, Manlove and Bliss, and an Englishman named Masterman. As he needed

13. Ibid., II, p. 656.

Porter Cornelious Bliss was a native of the State of New York who went to South America as private secretary of James Watson Webb, minister of the United States to Brazil in 1861. In 1862 he went to Buenos Aires and obtained employment under the Argentine government. In January, 1865, he embarked for Paraguay for the purpose of studying the Indian tribes of that region. While in Paraguay he was employed by the minister of Foreign Affairs to write a pamphlet upon the subject of boundaries between Paraguay and Brazil. While engaged in this work the war broke out and by order of President Lopez no foreign subject was allowed to leave the country. Soon after, Mr. Bliss was engaged by Mr. Washburn to collect information to be used by him in his work in Paraguay. At the time of the evacuation of Asuncion, Mr. Bliss who had previously been translator in the legation, took up his residence in that capacity in the family of Mr. Washburn.

George F. Masterman, an English subject, had entered the service of the Paraguayan government in 1861, in the capacity of professor of Materia Medica, and later as assistant surgeon at the general military hospital at Asuncion. In November 1866, he was arrested and imprisoned for "not obeying a telegraphic order, which arrived too late for execution" and was held and imprisoned for nearly a year. Through the efforts of Mr. Washburn he was released, and on October, 1867, went to live at the house of Mr. Washburn. Here he remained as physician for the family, as Mrs. Washburn had been unwell.

House Reports 41st Cong. 2nd Sess. 1867-1868, No. 65, p. XIII-XIV.
mote help, Mr. Rashburn engaged Major Manlove and Mr. Bliss as members of his legation and under his employ, and on the 22nd of February, sent a list of those who were to receive Legation privileges. 14

On the following day the Minister of Foreign Relations replied that as the city had been declared a military post subject to its commander, he could not recognize Bliss and Eastman as members of the legation. In order to "avoid unpleasant incidents," they might remain in Rashburn's dwelling, but not be allowed to go out, since they could be subject to arrest, as the guards had orders to let no one but public officials go about. 15

On the 26th of February, Rashburn wrote another note stating that due to an oversight he had "omitted the name of George Eastman as one of the members" of the legation. 16 This letter however was not delivered until the 4th of April, as Senor Berges had left town before its delivery. 17

On the 28th of February, Senor Fernandez, acting in

Rashburn, op. cit., II, p. 236.
House Reports, op. cit., No. 65, p. XIV.
Moore, Digest of International Law, II, p. 625.
Moore, Digest of International Law, II, p. 625.
16. Ibid., p. 625.
Dip. Cor. 1868-1869, II, p. 656.
House Reports, op. cit., No. 65, p. XIV.
the absence of the Minister of Foreign Relations, sent an
authentic letter saying, "This deeree confirms that of
the vice president, making the city of Asuncion, a military
post and ordering its evacuation, and transferring the seat
of the government to Luque, which I now advise you of; and,
while I regret your persistency in the resolution not to
follow the government to its new city, I hope that all per-
sons in your house will obey the orders that have been
issued, or may be issued, by the competent authorities."19

On the 6th of April, Hanlove, while out riding, was
arrested and became involved in a quarrel with the chief
of Police, but was rescued by Tashburn.10 A few days later
he was again arrested for military violations and held as
a prisoner. The protestations of Dr. Tashburn were of no
avail, so he referred the correspondence to his government,
at the same time declaring the arrest to be a "great affront
to the legation, if not a direct violation" of its rights.20
No action was ever taken by the Department of State, in
relation to the question.21

Before much time elapsed, Tashburn became involved in a

20. Eastman, Seven Eventful Years in Paraguay, (London,
     1889), p. 137.
controversy with the Paraguayan government that was beset with many difficulties. On the 16th of June the Portuguese consul, Leite Fereira, and his wife came to the Legation asking to be admitted, as he had fallen out of the graces of President Lopez, and feared that his consular character would no longer be respected.

On the 20th of June, the Minister of Foreign Relations inquired if Leite Fereira was in refuge in the Legation as reported by the police. He also requested to be informed of the "nature and motive" for his remaining, and also asked for a list of those who were sheltered in the legation. Replying two days later Mr. Cashburn stated that

On Mr. Cashburn's return to Asuncion he soon found that there had been many changes during his two years absence. He left a peaceful country, but returned to find the country "involved in a disastrous war", with terror, alarm, and distrust prevailing on every side. Lopez "possessed absolute authority," and began to govern in an unrestrained manner. As the war progressed President Lopez felt himself "constantly surrounded by enemies conspiring his overthrow." This caused him to establish a system of espionage so widespread that almost every citizen became a "voluntary or involuntary" informer. Methods of torture were used that extorted confessions for crimes and criminal intentions whether they existed or not. Even the members of his family and his relatives were subject to his unjust suspicions. The victims of his cruelty are said to number hundreds.

* House Reports, op. cit., No. 65, p. XI-XII.

Moore, Law Digest, II, p. 826.

Escarcega, Papers of the Presidente, VI, p. 836.
Moore, Law Digest, II, p. 826-827.
the questions pertained "to the internal affairs" of the legation and he was therefore under no obligation, "except as a matter of courtesy" to answer them. Leite Perea, who was formerly consul for the King of Portugal, came to the legation "as a guest." Cashburn also furnished a list of persons who were not mentioned in his note of February 24, as belonging to the legation.

On June 27, the Minister of Foreign Relations acknowledged the note of the 22nd, and stated that Leite Perea "was sheltered in the legation of the United States in contravention of all governmental regulations" and requested that he be delivered to a policeman who could present himself in two hours after the delivery of the note. The policeman arrived, but Mr. Cashburn refused to release Perea, stating that he would answer the letter the following day.

In his reply the following day Cashburn stated that "the mere allegation that a person is accused without stating his offense is not sufficient reason why he should be delivered up."

On July 11, the Minister of Foreign Affairs sent a long letter, stating that he had reviewed the correspondence

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   Cashburn, op. cit., II, p. 293.
25. Ibid., II, p. 293.
   Moore, Law Digest, II, p. 627.
and the circumstances pertaining to it. He also cited a subsequent passage of Vattel, Book IV. c. 9. sec. 118, in which it said that, "it belongs to the sovereign to decide on occasion, how far the right of asylum, which an ambassador claims as belonging to his house, is to be respected; and if the question relates to an offender whose arrest or punishment is of great importance to the state, the prince is not to be withheld by the consideration of a privilege which was never granted for the detriment and ruin of the states." In view of this passage he asked that Leite Pereira be turned over to the government. Furthermore, the reason for the American legation giving asylum "having ceased," that asylum "must also cease, as it was beginning to interfere with military regulations and the orders of the government. Therefore, he requested the dismissal of Leite Pereira before sunset, as well as other individuals, not members of the legation, who were staying there.

Mr. Washburn's letter of the 12th stated that all of the persons would leave voluntarily, the only ones remaining

28. Ibid., p. 628.
   Dip. Cor. 1869-1869, p. 723-735.
29. Ibid., p. 735.
being Dr. Carreras, Senor Rodriguez, their servant and
Mr. Leite Pereira. He had allowed the two gentlemen to
remain as they had requested, since he knew of no specific
charges against them. However, they had acknowledged their
willingness to leave. In reply, Senor Bonites stated that
Carreras and Rodriguez were "urgently demanded" by the tribu-
unal of justice, and asked for their dismissal on the fol-
lowing day, the request being fulfilled.

This note was followed by another note written on the
13th of July, requesting the dismissal of Porter Bliss,
American citizen, and George Masterson, British subject,
who were "accused of crimes not less grave" than the others
that had been dismissed by Cashburn. This request was

Dr. Carreras had come to Paraguay to give assis-
tance to his country against Brazil, but as his servi-
ces had not been made available he had desired to leave
it for the same as he believed he could enlist foreign
aid from one of the Pacific countries and thus aid his
country.

Mr. Rodriguez came to Paraguay in a diplomatic ca-
pacity being secretary to the Oriental legation, being
left in charge at the departure of the minister Senor
Vasquez Sagastum. After the fall of the government
which he represented his diplomatic functions were sus-
pended and he then desired to leave the country, but
had been unable to do so.

31. Ibid., p. 706.
32. Ibid., p. 740.

House Reports 41st Cong., No. 65, p. XV.
refused on the grounds that they were members of his legation. Furthermore, he stated, if he acknowledged the right of the government to ask the surrender of persons when he considered as members of the legation, he would "abrogate all his functions and rights as a minister." At the same time he asked for passports for "all the persons belonging to the Legation, as the course of duty he had adopted was so "at variance with the views of the government," making his presence of no longer use.33

The minister of Foreign Relations refused to recognize the claims of Mr. Cashburn, alleging that they were involved in a plot against the government, and thus demanding their delivery.34 This was followed by other correspondence in which the servants that went out of the house were accused

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33. Cashburn had made several requests for recall, but they had been refused as he had not made his requests final and absolute. On the 15th of January, 1869, he made his request final and absolute and in the same note asked that a United States ship of war be sent to Arunsel to remove him. (1) On the 8th of January, 1868, Mr. Welles, Secretary of the Navy, stated in a letter to Mr. Secord that Rear-Admiral Charles A. Davis, commander of the South Atlantic Squadron, had been informed that a vessel should be sent to relieve Mr. Cashburn. (2)


of carrying messages from the enemy to the refugees in the house.35 Cashburn received another letter written on July 23, asking for the immediate delivery of a sealed package of communications, which the ex-minister of Foreign Relations Jose Borges had delivered to him, and which were of "great importance to the government." These papers were to be delivered to the officer bearing the communication. Minister Cashburn avowed his ignorance of such a letter, and stated so in a note dated July 23.36

More correspondence followed in which the demands of the government were repeated, and attempts were made to try to connect him with an attempt to overthrow the government. It was alleged that Ex-Minister Borges was a traitor and keeping in touch with the enemy, and that Cashburn, under his official seal, was transmitting correspondence to and from between the conspirators.37

Replying on the 11th of August, Mr. Cashburn denied any knowledge of the conspiracy, stating that as far as he was concerned the correspondence was closed, and that under the circumstances there were two things to do, accept the statement as true and drop the correspondence, or refuse to accept

36. Ibid., II, p. 749.
37. Ibid., II, p. 761.
them, send his passports, and provide means for him to
leave the country. 38

On August 28, a letter was received from Luis Caminos,
stating that he had been instructed with the Department of
foreign affairs, and in reply to the letter of the 15th,
requested that he send a "specific list of the individuals"
for whom he desired passports, so that he could make them
out in conformity with his desire. 39 A letter containing
the list was sent the following day, including among others,
the names of Bliss and Masterman. 40 On the 4th of September
a letter was written in reply, saying that the passports
would be sent, but that, among the individuals of the leg-
ation the "accused" Bliss and Masterman, "could not obtain
passports and must remain and answer to the charges hanging
over them before the local courts of justice. The letter
also informed Cashburn that Lieutenant Kirkland, in charge

39. Ibid., p. 606.
40. Ibid., II, p. 601.

Balthazar, Carrera's Negro servant was also refused
a permit, and for that reason could not leave the
country.
of U. S. Steamer the Wasp, had arrived at Villota and that a steamer was to be put at his disposal in the port of Asuncion for the use of himself and his suite.

On the 10th of September 1868, Mr. Washburn, with his wife and servants, and accompanied by Bliss and Easterman, left the legation for the purpose of boarding the Paraguayan steamer that was to take them to where the Wasp was waiting. As soon as they were outside of the legation, they were surrounded by soldiers who arrested Bliss and Easterman, and the servant Balthazar. Mr. Washburn made no other demonstration than to salute them with his hat.

41. Dipl. Cor. 1868-1869, II, p. 815.
House Reports, op. cit., No. 65, p. XV.
Washburn, op. cit., II, p. 418.

**In 1865 Admiral Davis, commanding the South Atlantic Squadron, sent the U. S. S. Wasp up the Parana for the purpose of bringing Mr. Washburn and his family from Paraguay. The Allied forces had refused him permission to pass through the blockade, thus making it necessary to return to Montevideo, without accomplishing his mission. Mr. Seward took the stand that the United States, "had a lawful right to send a ship of war up the Parana to Asuncion, for the purpose of receiving the United States minister and his family, and conveying them from the scene of strife and war to neutral territory or waters." The refusal of the commander of the allied forces to permit the Wasp to pass through "violates becoming comity on the part of Brazil and the allies toward the United States, and is in contravention of the law of nations." Before those instructions were received in Buenos Aires the allies agreed that the Wasp might proceed to Asuncion.**

Dipl. Cor. 1868, II, p. 238.
as they departed.\footnote{42}

On September 12, just before leaving Villota, Mr. Cashburn sent a letter to President Lopez, stating that it was his duty to make a "solemn protest" against the arrest of two members of his legation, Cornelius Bliss and George Easterman. He considered their arrest in the street while leaving the legation "as gross a violation of the law of nations" as would have been their arrest by force in his house.\footnote{43} He further stated, "Your threat to Captain Kirkland, on his arrival, that you would keep no a prisoner in the country, will be duly represented to my government."\footnote{40} Mr. Cashburn and his family were brought to Buenos Aires, where, on the 26th of September, he informed the Department of State of the conditions and circumstances attending his departure.\footnote{44}

\footnote{42}{House Reports, op. cit., No. 65, p. XV-XVI.}
\footnote{43}{Dip. Cor. 1869-1869, II, p. 320.}
\footnote{40}{Cashburn, op. cit., II, p. 439.}
\footnote{44}{On the 2nd day of September Lieutenant Kirkland first visited President Lopez who stated that Mr. Cashburn was an enemy of Paraguay, and he feared that he would have to detain him unless the matter was arranged between himself and Minister Cashburn. Kirkland replied that any action taken against the United States minister would be avenged by the government, and that the first duty of Lopez was to allow him to depart peaceably and refer the affair to the United States government. He also stated that he would wait a proper time, and if Cashburn were not placed on board, he would send word that Cashburn was a prisoner. President Lopez agreed to allow him to depart and report his conduct to the government.}

\footnote{40}{House Reports, 41st Cong. 2nd Session, No. 65, p. 195.}
\footnote{44}{House Reports, op. cit., No. 65, p. XI.}
On September 26, 1868, Mr. Cashburn sent from Buenos Aires, a dispatch to the U. S. Department of State in which he described the horrible conditions in Paraguay. Continuing further he said, "Lopez pretended, some three months ago, to have discovered some sort of a conspiracy, and after arresting almost all the foreigners, demanded of me that I should deliver up to the tribunals those who had sought asylum in my house at the time the Brazilian fleet went to Asuncion in February last. To defend these men and save them from the clutches of Lopez, I had to correspond with the Government long enough to make a volume of diplomatic despatches. It was all in vain however. They all had to go; though none, except Bliss and Eastermann, were taken by force." 45

Owing to the condition of things in Paraguay, this despatch of September 26 was the first report the Department of State had received from Mr. Cashburn since the 17th of the preceding April. Apart from describing Bliss and Eastermann as "members" of the legation, all the information it afforded as to their seizure and the abandonment of the legation by other individuals, was that contained in the passage above quoted. 46


House Reports 41st Congress, 2nd Sess., 1867-1868, No. 63, p. XX.


The correspondence to which Mr. Washburn's letter of Sept. 26 referred, was transmitted with a despatch from Buenos Aires, October 5, 1862. On the 16th of November, the despatch of September 26, but not that of October 5, having been received at Washington, 47 Rear Admiral Davis was ordered to Paraguay, to take such measures as might be found necessary "to prevent violence to the lives and property of American citizens there, and redress for any extreme insult or violence that may have been arbitrarily committed against the flag of the United States or their citizens." 48

In a letter to the Secretary of the Navy, preceding the issuance of the order, Mr. Seward says: Mr. Washburn's despatch "conclusively shows that the situation of all foreigners, including United States citizens, at Asuncion, is greatly imperilled, and that especially, Porter G. Eliss and George F. Masterman, United States Citizens, lately in some way connected with the United States legation, have suffered personal violence and have perhaps been murdered." However, Mr. Seward realized that the merits of the controversy could not be fully understood until all correspondence was received; and for that reason the admiral was asked to use the "exercise of a sound discretion." 49

48. Ibid., II, p. 529.
When Admiral Davis sailed from Buenos Aires for Asuncion, he took with him General Martin T. McMahon, Mr. Dashburn's successor, who had left for his post in September. 50 Mr. McMahon's orders were enclosed in a letter written to him by Mr. Seward, November 31, 1860, which stated, "that you will forbear from presenting your credentials to the President of Paraguay until a satisfactory solution of the grievances which are the subject of my several instructions shall have been obtained, and you will in every case be governed by these instructions. This will not prevent you from opening and conducting in your official character as United States minister resident to Paraguay any correspondence which shall become necessary with the President of that republic, or with any other proper party, in that country. All correspondence will thus be conducted by yourself, but it will be desirable that Rear-Admiral Davis should join you in the same." 51

In a despatch dated on the United States Flagship, Saop, off Angostura Batteries, Paraguay, December 11, 1860, General McMahon gave an account of what occurred. They arrived off the batteries on the third of December, and General Davis immediately addressed a note to President

50. Mooro, Digest of Law, II, p. 830.
Letters & Papers of Presidents, VI, p. 636.
Lopez informing him that he had arrived with the American Minister, but that as an "indisputable preliminary step" to the presentation by General McMahon to his excellency of his credential letter, he would have to request that, "Messrs. Bliss and Masterman, the persons arrested and detained in Asuncion while under the protection and attached to the legation of the United States minister, be restored to the authority of the United States flag." 52

In an interview held on shore later in the day, Lopez held the view, "that the men, Bliss and Masterman, were guilty of serious crimes, and were not members in good faith of the United States Legation, that they at that moment were actually undergoing trial; that, nevertheless, the President of Paraguay, confiding in the justice of the American government, would deliver them to the authorities of the United States, thereby exercising arbitrary authority in taking them from the custody of the judicial authorities, and expected to justify their seizure by showing to the government of the United States that their pretended connection with its legation was merely for the purpose of shielding them from the

Moore, Digest of International Law, II, p. 630.  
House Reports 41st Cong. 2nd Sess. 1869-1870, No. 65, p. XXI.  
House Exec. Documents, 40th Congress, 3rd Session, (Washington, 1869), No. 79, p. 89.  
consequences of their guilty acts; that, if he had delivered
then under the terms of the admiral's letter claiming them
as attached to and under the protection of the legation, he
believed that it would be conceding an important point,
which he denied and hoped to disprove." The admiral, al-
though not agreeing as to the construction of his first
letter, or of its effect, consented to replace it by another
in different terms. 53

On December 4, Admiral Davis wrote another letter
omitting any reference to the Minister, and asking that
Moscoso, Eliss and Mocetaran, the "individuals arrested and
detained" in Asunción be delivered to him. As to the status
of these individuals; it was not his duty, he stated, "to
define, or even consider."54

Answering for President Lopez, Senor Palacios (Chief
Military Secretary), December 5, 1868, stated that it was
not in the power of the President to "accede to the deliv-
ery" on the terms of Admiral Davis, of the "accused Eliss
and Mocetaran" to his keeping, who, if not called upon to
define or even to consider, should not at least conceal

54. Ibid., p. 693-694.
House Reports 41st Cong., 2nd Sess., 1869-1870, No. 69,
p. XXIII.
Moore, Digest of International Law, II, p. 650.
from himself the fact that they were criminals, deeply committed in the affairs of a "horrible conspiracy." 55

Nevertheless, the President would consent to the delivery of the "criminals" Elises and Easterman, provided that the request was more in conformity with the fact of their "being accomplices of Mr. Cashburn." 56

Answering on the same day, Admiral Davis said that it was no part of his "official duty either to offer or to refuse any terms which would affect the alleged criminal condition" of the two persons in question. He further said, "The papers accompanying those two persons will sufficiently express to the government of the United States the judgment of the government of Paraguay in their cases. I take this occasion to inform your excellency that I am accompanied by a minister accredited to the government of Paraguay, who, should no difficulties exist to prevent it, will present his credentials. Considering this, and the friendship of the government of the United States of America for that of the republic of Paraguay, I have to ask your excellency to embark the accused persons, Elises and Easterman on board of this vessel, in order that I may keep them

in security, subject to the disposition of the government
of the United States, of whose justice and friendly senti-
ments your excellency can entertain no doubt. Your excelle-
cy is aware that the present position of this vessel is
one in which she should not be detained longer than is
absolutely necessary. Will your excellency, therefore,
be pleased to inform me when I may expect to receive these
persons on board, or to apprise me at the earliest moment
that it is not your excellency's intention to send them at
all, if such should be your final decision."57

On the same day, Senor Palacio replied, "that the men
would be delivered on board the flag-ship on Tuesday, the
8th instant, at three o'clock in the afternoon, and requested
that the admiral appoint one or two officers to witness the
verification of the legal process against the accused on the
morning of the same day." This communication stated the
delivery was made as "an act of courtesy on the part of the
government of Paraguay, and as a proof of its friendship for
the government of the United States and of confidence in its
justice, and that he did not understand it to be in answer
to a reclamation or demand."58

House Reports 41st Congress 2nd Sess., 1867-68, No. 65,
p. XXIV.
House Reports, op. cit., No. 65, p. XXIV-XXV.
As the admiral's previous communication had stated that his purpose was merely to obtain the men, and in doing so not to "commit him to or against any view which the government of Paraguay might entertain or express on the subject," he replied that he would be prepared to receive the men at the hour named, and would send two men "to verify or witness any legal declarations" as requested. 69

On the 8th instant, Commander Ramsey and Lieutenant Commander Kirkland went to the headquarter of President Lopez and heard the declarations of the accused persons. 60 The "declaration" referred to was a so-called confession that "Miss and Mastersman were engaged in a conspiracy to dethrone Lopez, and that Mr. Washburn, forgetful of the duties he owed to himself as a man, and to the government whose minister he was, was engaged in the same conspiracy." Undoubtedly this confession did not have the least semblance of truth as the declarations were extorted by torture. Under the circumstances, there can be little reason for either of the two officers taking part in the ceremony. 61

69. House Reports 41st Cong. 2nd Sess. 1868-1869, No. 65, p. XXV.
60. Ibid., p. 29.
61. House Reports, op. cit., No. 65, p. XXVI-XXVII.
On the 10th, at eleven P.M., the men were delivered as prisoners to Admiral Davis and placed on board the Wasp. On the following day, Mr. McPherson presented his credentials to President Lopez and entered upon his official duties. Mr. McPherson received his final directions as minister resident to Paraguay from the State Department on the 2nd day of September, 1868, and before the President of the United States had been fully informed of the facts just related. It is "reasonable to assume that no successor to Mr. Vashburn would have been appointed had our government then been in possession of these facts." 63

General McPherson did not remain long in Paraguay. No communications were allowed to pass through the military lines of the Allies for months, and he received no word from the government of the United States until Captain Davis sent a fleet through. 64 Minister McPherson was recalled in June, 1868, 65 by President Johnson, who stated that "the conduct of the war between the Allied and the Republic of Paraguay" had made the "intercourse with that country so difficult" that this act had "been deemed advisable." 66

63. House Reports, op. cit., III, p. 65, p. XXVII-XXXVII.
64. House Exec. Doc. 30th Cong., 3rd Sess., No. 73, p. 94.
65. House Reports, op. cit., No. 65, p. XXVII.
Eliss and Easterman were treated as prisoners and deprived of their freedom until their arrival at Rio de Janeiro. On the 25th of January, they were placed on the mail steamer Mississippi, and left for New York. In obedience to the orders of Rear-Admiral Davis, South American Squadron, Mr. Easterman reported his arrival to the Secretary of State, Mr. Seward. During an interview later held with Mr. Seward, Mr. Easterman complained of the treatment he and Mr. Eliss had received while on board the Taip, and asked that the matter be given consideration.

As a result of this meeting an investigation was ordered by the Congress of the United States, to inquire into the circumstances relating to the alleged imprisonment of said Eliss and Easterman, and into the conduct of the late American minister to Paraguay, and of the officers commanding the South American Squadron since the breaking out of the Paraguayan war. The "Paraguayan Investigation" was conducted by the committee of Foreign Affairs of the House of Representatives. Hosera, Cashburn, Eliss,

68. H. Andrew Clovan, "James Eaton Cobb, United States Minister to Brazil 1851-1869" in Congresses Internacionales de Historia De America, I, (Rio de Janeiro, 1925) p. 381-382.
Easternma, McCahon, Coden, and Davis, all gave testimony before the committee. 70

Examination of witnesses commenced at Washington on the 30th day of March, 1869, and continued until they had taken all of the testimony that could be procured. As it was necessary to bring before the committee witnesses then absent from the United States on duty with the South Atlantic Squadron, a sub-committee was appointed to take further testimony whenever the attendance of the remaining witnesses could be procured. A recess was taken until the 21st of October, at which time the members of the sub-committee not at New York City, and resumed the examination of witnesses. Subsequent sessions were held at Washington, at which place the examination of the witnesses was concluded. 71

The committee stated, in reference to the testimony, that much of it was of "conflicting character," and revealed a "feeling of bitterness and animosity between different officers of the navy, and between the naval and diplomatic officers of the government, connected with the matters under investigation, not creditable to the parties concerned, and subversive of that efficiency in the public service

70. _Glover, op. cit._, p. 38.
71. _House Reports, op. cit._, No. 65, p. 1.
which the government has a right to expect from its officials." In discharging their duty the committee allowed to the parties implicated, "the utmost latitude in eliciting all the facts which might in any manner be relevant to the points at issue; have endeavored to reconcile, wherever practicable, all conflicting testimony, and to arrive at their conclusions uninfluenced by the feeling or prejudices of those whose official conduct had been the subject of this investigation." 72

After hearing all of the testimony "the committee presented" a number of "resolutions" and "respectfully recommended their adoption."

Resolved, That Rear-Admiral S. W. Godon, in neglecting to aid Mr. Bushburn in reaching the government to which he was accredited, failed to discharge his duty as commander of the South Atlantic Squadron.

Resolved, That Bliss and Masterman were members of the personal suite of Mr. Bushburn, and were, therefore, under the law of nations, entitled to the protection of the officers of the United States.

Resolved, That the forcible arrest and detention of Bliss and Masterman by the government of Paraguay was a violation of the law of nations, and a gross insult to the honor and dignity of the United States.

Resolved, That to approve the action of the President in withdrawing our minister (General McMahon) from the

Resolved, That it is clearly the duty of our naval officers on foreign stations to render all reasonable assistance to the diplomatic officers of the United States in the discharge of their duties; and that a refusal or neglect to render such assistance when required, or any discourtesy by such naval officers towards such diplomatic officers, should be subject of inquiry and punishment by the Navy Department.

Mr. Good, on behalf of Mr. Swann, submitted the following resolutions for the minority of the Committee on Foreign Affairs:

Resolved, That the forcible arrest and deten-
tion of Messrs. Bliss and Easter-
man, while under the protection of the American flag, was an outrage which demanded prompt attention.

2. That Mr. Washburn in submitting to an insult of President Lopez, in his refusal to grant passports to Messrs. Bliss and Easterman, and in separating himself from them in the streets of Asuncion, and leaving them in the hands and at the mercy of the Paraguayan authorities, caused a serious compromise of the American flag, and could not be justified upon any consideration of personal safety; and that Min-
ister Washburn, in justice to his position and honor of his flag, ought not to have accepted his passport until permitted to with-
draw with every member of his legation.

3. That in the hostile or unfriendly attitude assumed by Minister Washburn toward Lopez and the Paraguayan government in his relations and intercourse with the President of that republic, and in associating Miss and Masterman with his legation (one a British subject, suspected by Lopez of a conspiracy with his enemies and the enemies of his country—both adventurers and of doubtful reputation), Minister Washburn committed a grave act of imprudence, which resulted in most, if not all, of the complications attending his residence in Paraguay.

4. That Admiral Godon and Davis, in command of the South Atlantic squadron, have committed no act to subject them to the censure of this government or the investigation of a court-martial, said officers having, to the best of their judgment and understanding, complied with the instructions of the Navy Department, and received its approval.

5. That no legislation is required on the part of Congress, growing out of the facts stated in this record, and the correspondence now on file in the State and Navy Departments.

6. That this committee be discharged from the further consideration of this subject.75

The Paraguayan war ended in March, 1870 with the defeat

73. House Reports, op. cit., No. 65, p. XXIX-XXX.
of the remains of Lopez's army in northern Paraguay, and
the death of the President who was killed in battle.\(^{74}\)

As a result of this war the population of the country
was probably reduced fifty per cent, and in the following
months, disease and starvation continued to take its toll.\(^{75}\)
Paraguay has never recovered from the effects of this war
against the "Triple Alliance."

The death of President Lopez also brought to a close
the period we have been studying. Any claims that the
United States might have brought against the government
of Paraguay were now useless, for Francisco Solano Lopez
had exercised all of the functions of the government.
Furthermore, Paraguay had neither men nor money, and any
action of the United States against this weak country would
have not been to her credit.

\(^{74}\) Dawson, op. cit., I, p. 219.
Wiliams, op. cit., p. 625.
William Warren Sweet, A History of Latin America,

\(^{75}\) Dawson, op. cit., I, p. 220.
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General reading.


Another valuable source of material.


One of the most valuable sources of material. Mr. Washburn was so prejudiced against President Lopez that most of his conclusions cannot be used.


Material used in first part of paper.


A condensed valuable source of information.


General reading.