FRIENDSHIP, COMMERCE, AND NAVIGATION

Treaty signed at Lima July 26, 1851
Ratified by Peru December 1, 1851
Senate advice and consent to ratification June 23, 1852
Ratified by the President of the United States July 16, 1852
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Proclaimed by the President of the United States July 19, 1852
Article XXII annulled and revoked, in part, by convention of July 22, 1856 [1]
Article XII interpreted by convention of July 4, 1857 [2]
Terminated December 9, 1863 [3]

10 Stat. 926; Treaty Series 276 [4]

The United States of America and the Republic of Peru, being equally animated with the desire to render firm and permanent the peace and friendship which have always so happily subsisted between them, and to place their commercial relations upon the most liberal basis, have resolved to fix clear and precise rules, which shall in future be religiously observed between the two Nations, by means of a Treaty of Friendship, Commerce and Navigation.

To attain this desirable object, the President of the United States of America has conferred Full Powers on John Randolph Clay, the accredited Chargé d'Affaires of the said States to the Government of Peru, and the President of the Republic of Peru has conferred like Full Powers on Brigadier General, Don Juan Crisostomo Torrico, Minister of War and the Marine, Minister of Foreign Affairs and interim &c. &c. who, after exchanging their respective Full Powers, found to be in good and due form, have agreed upon and concluded the following Articles:

Article I

There shall be perfect and perpetual peace and friendship, between the United States of America and the Republic of Peru and between their re-

[1] TS 277, *post*, p. 1019.
[2] TS 278, *post*, p. 1025.
[3] Pursuant to notice of termination given by Peru Dec. 9, 1862.
[4] For a detailed study of this treaty, see 5 Miller 1005.

spective territories, people and citizens, without distinction of persons, or places.

ARTICLE II

The United States of America and the Republic of Peru mutually agree, that there shall be reciprocal liberty of Commerce and Navigation, between their respective territories and citizens; the citizens of either Republic may frequent with their vessels all the coasts, ports and places of the other, wherever foreign commerce is permitted, and reside in all parts of the territories of either and occupy dwellings and warehouses, and every thing belonging thereto shall be respected and shall not be subjected to any arbitrary visits, or search. The said citizens shall have full liberty to trade in all parts of the territories of either, according to the rules established by the respective regulations of Commerce, in all kinds of goods, merchandise, manufactures and produce not prohibited to all, and to open retail stores and shops, under the same municipal and police regulations as native citizens; and they shall not, in this respect, be liable to any other, or higher taxes, or imposts, than those which are or may be paid by native citizens. No examination, or inspection of their books, papers, or accounts, shall be made, without the legal order of a competent tribunal, or judge. The citizens of either country shall also have the unrestrained right to travel in any part of the possessions of the other, and shall, in all cases, enjoy the same security and protection as the natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing; they shall not be called upon for any forced loan, or occasional contribution, nor shall they be liable to any embargo, or to be detained with their vessels, cargoes, merchandise, goods, or effects, for any military expedition, or for any public purpose whatsoever, without being allowed therefor a full and sufficient indemnification, which shall, in all cases, be agreed upon and paid in advance.

ARTICLE III

The two High Contracting Parties hereby bind and engage themselves; not to grant any favor, privilege, or immunity whatever, in matters of Commerce and Navigation, to other Nations, which shall not be, also, immediately extended to the citizens of the other contracting party, who shall enjoy the same, gratuitously, if the concession shall have been gratuitous, or on giving a compensation as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement, if the concession shall have been conditional.

ARTICLE IV

No higher or other duties, or charges, on account of tonnage, lighthouses, or harbour dues, pilotage, quarantine, salvage in case of damage or shipwreck, or any other local charges, shall be imposed in any ports of

Peru on vessels of the United States, of the burthen of two hundred tons and upwards, than those payable in the same ports by Peruvian vessels of the same burthen; nor in any of the Ports of the United States, by Peruvian vessels, of the burthen of two hundred tons and upwards, than shall be payable, in the same ports, by vessels of the United States of the same burthen.

Article V

All kinds of merchandise and articles of Commerce which may be lawfully imported into the ports and territories of either of the High Contracting Parties, in national vessels, may also be so imported in vessels of the other party, without paying other or higher duties and charges, of any kind or denomination whatever, than if the same merchandise and articles of commerce were imported in national vessels. Nor shall any distinction be made in the manner of making payment of the said duties or charges.

It is expressly understood, that the stipulations in this and the preceding Article are, to their full extent, applicable to the vessels and their cargoes, belonging to either of the High Contracting Parties, arriving in the Ports and territories of the other, whether the said vessels have cleared directly from the ports of the country to which they appertain, or from the ports of any other nation.

Article VI

No higher or other duties, or charges, shall be imposed or levied upon the importation into the ports and territories of either of the High Contracting Parties, of any Article, the produce, growth or manufacture of the other party than are or shall be payable on the like Article, being the produce, growth or manufacture of any other country: nor shall any prohibition be imposed upon the importation of any article, the produce, growth or manufacture of either party, into the ports or territories of the other, which shall not equally extend to all other nations.

Article VII

All kinds of merchandise and articles of Commerce which may be lawfully exported from the ports and territories of either of the High Contracting Parties, in national vessels, may also be exported in vessels of the other party and they shall be subject to the same duties only, and be entitled to the same drawbacks, bounties and allowances, whether the same merchandise and articles of Commerce be exported in vessels of the one party or in vessels of the other party.

Article VIII

No changes or alterations in the tariffs of either of the High Contracting Parties, *augmenting* the duties payable upon merchandise or articles of Commerce, of any sort or kind, imported into, or exported from their re-

spective ports, shall be held to apply to the Commerce or navigation of either party, until the expiration of eight calendar months after the said changes or alterations shall have been promulgated and become a law, unless the law or decree, by which such changes or alterations shall be made, contain a prospective provision to the same, or similar effect.

Article IX

It is hereby declared, that the stipulations of the present treaty are not to be understood as applying to the navigation and coasting trade, between one port and another situated in the territories of either contracting Party—the regulation of such navigation and trade being reserved, respectively, by the Parties, according to their own separate laws.

Vessels of either Country shall however be permitted to discharge part of their cargoes at one port open to foreign commerce in the territories of either of the High Contracting Parties, and to proceed with the remainder of their cargo to any other port, or ports, of the same territories, open to foreign commerce, without paying other or higher tonnage dues or port charges, in such cases, than would be paid by national vessels in like circumstances, and they shall be permitted to load in like manner at different ports in the same voyage outwards.

Article X

The Republic of Peru desiring to increase the intercourse along its coasts, by means of Steam Navigation, hereby engages to accord to any citizen or citizens of the United States, who may establish a line of Steam vessels, to navigate, regularly, between the different ports of entry, within the Peruvian territories, the same privileges of taking in and landing freight, entering the by-ports for the purpose of receiving and landing passengers and their baggage, specie and bullion; carrying the public mails, establishing depots for coal, erecting the necessary machine and workshops, for repairing and refitting the Steam vessels; and all other favors enjoyed by any other association or company whatsoever.

It is, furthermore, understood, between the Two High Contracting Parties, that the Steam vessels of either shall not be subject, in the ports of the other Party, to any duties of tonnage, harbor or other similar duties whatsoever, than those that are or may be paid by any other association or Company.

Article XI

For the better understanding of the preceding Articles, and taking into consideration the actual State of the commercial marine of Peru, it is stipulated and agreed that every vessel, belonging exclusively to a citizen or citizens of the said Republic, and of which the Captain is also a citizen of the same, though the construction or the crew is, or may be, foreign, shall be considered for all the objects of this treaty, as a Peruvian vessel.

ARTICLE XII [5]

The Whale Ships of the United States shall have access to the port of Tumbez, as well as to the ports of entry in Peru, and may sail from one port to another for the purposes of refreshment and refitting, and they shall be permitted to sell or barter their supplies, or goods, including Oil, to the amount of two hundred dollars, *ad valorem,* for each vessel; without paying any tonnage or harbour dues, or any duties or imposts upon the articles so sold or bartered. They shall be also permitted, with like exemption from tonnage and harbour dues, further to sell or barter, their supplies, or goods, including oil, to the additional amount of one thousand dollars, *ad valorem,* for each vessel; upon paying for the said additional articles, the same duties as are payable upon like supplies, or goods, and oil, when imported in the vessels and by the citizens, or subjects, of the most favored nation.

ARTICLE XIII

The merchants, commanders, or masters of vessels and other citizens of either contracting party, shall be wholly free to manage their own business and affairs, in all the ports and places within the jurisdiction of the other, or to commit their business and affairs to the management of any person whom they may choose to appoint, as agent, factor, consignee, or interpreter. They shall not be restrained in the choice of persons to act in such capacities, or be compelled to pay any salary, or remuneration, to any one whom they do not wish to employ. Absolute freedom shall be given, as well with respect to the consignment and sale of their merchandise and articles of commerce, as to the purchase of their returns, unloading, loading and sending off their vessels. The buyer and seller shall have full liberty to bargain together and fix the price of any merchandise, or articles of Commerce, imported into, or to be exported from the territories of either contracting Party, the regulations of Commerce, established in the respective countries, being in every case, duly observed.

ARTICLE XIV

Peruvian citizens shall enjoy the same privileges, in frequenting the mines and in digging or working for gold, upon the public lands situated in the State of California, as are, or may be hereafter accorded by the United States of America, to the citizens or subjects of the most favored nation.

ARTICLE XV

The citizens of either of the High Contracting Parties shall have the full power and liberty to dispose of their personal property and effects, of every kind and description, within the jurisdiction of the other, by sale, donation,

[5] For an interpretation of art. XII, see TS 278, *post,* p. 1025.

testament or otherwise; and their heirs or representatives, being citizens of the other party, shall succeed to their said personal property and effects, whether by testament, or *ab intestato,* and may take possession of the same, themselves, or by others acting for them, and dispose of the same at their pleasure, paying such dues, only, as the inhabitants of the country, wherein said effects may be, shall be subject to pay in like cases. Should the property consist of real estate and the heirs, on account of their character as Aliens, be prevented from entering into possession of the inheritance, they shall be allowed the term of three years, to dispose of the same and withdraw and export the proceeds, which they may do, without any hindrance and without paying any other dues or charges, than those which are established by the laws of the country.

Article XVI

If any vessel belonging to the citizens of either of the High Contracting Parties should be wrecked, suffer damage, or be left derelict, on or near the coasts within the territories of the other, all assistance and protection shall be given to such vessel and her crew, and the vessel or any part thereof, and all furniture and appurtenances belonging thereto, together with all the merchandise, which shall be saved therefrom, or the produce thereof, if sold, shall be faithfully restored to the owners, or their agents, they paying only the expenses incurred in the preservation of the property, together with the rate of salvage, which would have been payable in the like case by national vessels; and it shall be permitted for them to unload the merchandise and effects on board, with the proper precautions to prevent their illicit introduction, without exacting in such case any duty, impost or contribution whatever, provided the same be exported.

Article XVII

When through stress of weather, want of water or provisions, pursuit of enemies or pirates, the vessels of one of the High Contracting Parties, whether of war (public or private) or of trade, or employed in fishing, shall be forced to seek shelter in the ports, rivers, bays and dominions of the other, they shall be received and treated with humanity: sufficient time shall be allowed for the completion of repairs, and while any vessel may be undergoing them, its cargo shall not, unnecessarily, be required to be landed, either in whole or in part: all assistance and protection shall be given to enable the vessels to procure supplies and to place them in a condition to pursue their voyage, without obstacle or hindrance.

Article XVIII

All vessels, merchandise and effects, belonging to the citizens of either of the High Contracting Parties, which may be captured by Pirates, either on the high seas or within the limits of its jurisdiction, and may be carried into, or

found in the rivers, roads, bays, ports or dominions of the other, shall be delivered up to the owners or their agents, they proving, in due and proper form, their rights before the competent tribunals; it being understood, that the claim thereto shall be made within two years, by the owners themselves, their agents or the agents of the respective Governments.

Article XIX

The High Contracting Parties promise and engage, to give full and perfect protection to the persons and property of the citizens of each other, of all classes and occupations, who may be dwelling or transient in the territories, subject to their respective jurisdiction: they shall have free and open access to the tribunals of justice for their judicial recourse, on the same terms as are usual and customary with the natives or citizens of the country in which they may be, and they shall be at liberty to employ in all causes, the advocates, attornies, notaries or agents of whatever description, whom they may think proper.

The said citizens shall not be liable to imprisonment, without formal commitment under a warrant signed by a legal authority, except in cases *flagrantis delicti,* and they shall, in all cases, be brought before a magistrate, or other legal authority, for examination, within twenty four hours after arrest, and, if not so examined, the accused shall, forthwith, be discharged from custody. Said citizens, when detained in prison shall be treated, during their imprisonment, with humanity and no unnecessary severity shall be exercised towards them.

Article XX

It is likewise agreed, that perfect and entire liberty of conscience shall be enjoyed by the citizens of both the contracting parties, in the countries subject to the jurisdiction of the one or the other, without their being liable to be disturbed or molested on account of their religious belief, so long as they respect the laws and established usages of the country.

Moreover, the bodies of the citizens, of one of the contracting parties, who may die in the territories of the other, shall be buried in the usual burying grounds, or in other decent and suitable places, and shall be protected from violation or disturbance.

Article XXI

The citizens of the United States of America and of the Republic of Peru may sail with their vessels, with entire freedom and security from any port, to the ports or places of those who now are or hereafter shall be enemies of either of the contracting parties, whoever may be the owners of the merchandise laden in the said vessels. The same citizens shall also be allowed to sail with their vessels, and to carry and traffic with their merchandise, from the ports and places of the enemies of both parties, or of one of them, with-

out any hindrance, not only to neutral ports and places, but also from one port belonging to an enemy to another enemy's port, whether they be under the jurisdiction of one power or under several. And it is agreed, that free ships shall give freedom to goods, and that every thing shall be deemed free, which shall be found on board the vessels belonging to the citizens of either of the contracting parties, although the whole lading, or a part thereof, should belong to the enemies of either; articles, contraband of war being always excepted. The same liberty shall be extended to persons, who may be on board free ships, so that said persons cannot be taken out of them, even if they may be enemies of both parties, or of one of them, unless they are officers or soldiers in the actual service of the enemy. It is agreed, that the stipulations in this article, declaring that the flag shall cover the property shall be understood as applying to those nations only who recognize this principle; but if either of the contracting parties shall be at war with a third, and the other shall remain neutral, the flag of the neutral shall cover the property of enemies whose governments acknowledge this principle and not that of others.

Article XXII [6]

When the neutral flag of one of the contracting parties shall protect the property of the enemies of the other, in virtue of the preceding article, neutral property found on board enemies' vessels shall likewise be considered as enemies' property, and shall be subject to detention and confiscation, unless it shall have been put on board before the declaration of war, or even afterwards, if it were done without knowledge of such declaration; but the contracting parties agree that ignorance cannot be alleged after the lapse of six months from the declaration of war. On the contrary, in those cases where the flag of the neutral does not protect enemies' property which may be found on board, the goods or merchandise of the neutral embarked in enemies' vessels shall be free.

Article XXIII

The liberty of commerce and navigation, stipulated for in the preceding Articles, shall extend to all kinds of merchandise, except the articles called contraband of War, under which name shall be comprehended—1st Cannons, mortars, howitzers, swivels, blunderbusses, muskets, fusees, rifles, carbines, pistols, pikes, swords, sabres, lances, spears, halberds, grenades, bombs, powder, matches, balls and every thing belonging to the use of these arms.

2nd Bucklers, helmets, breastplates, coats of mail, accoutrements and clothes made up in military form and for military use.

3d Cavalry belts and horses, with their harness.

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[6] For partial annulment and revocation of art. XXII, see convention of July 22, 1856 (TS 277), *post*, p. 1019.

4th And generally all offensive or defensive arms made of iron, steel, brass, copper, or of any other material, prepared and formed to make war by land or at sea.

Article XXIV

All other merchandise and things not comprehended in the articles of contraband, explicitly enumerated and classified as above, shall be held and considered as free, and subjects of free and lawful commerce, so that they may be carried and transported in the freest manner by both the contracting parties, even to places belonging to an enemy, excepting only those places, which are at that time besieged or blockaded; and to avoid all doubt in this particular, it is declared, that those places only shall be considered as besieged or blockaded, which are actually invested or attacked by a force capable of preventing the entry of the neutral.

Article XXV

The articles of contraband, or those before enumerated and classified, which may be found in a vessel bound for an enemy's port, shall be subject to detention and confiscation; but the rest of the cargo and the ship shall be left free, that the owners may dispose of them, as they see proper. No vessel of either of the contracting parties shall be detained on the high seas, on account of having on board articles of contraband, whenever the master, captain, or supercargo of said vessel will deliver up the articles of contraband to the captor; unless indeed, the quantity of such articles be so great, or of so large bulk, that they cannot be received on board the capturing vessel without great inconvenience; but in this and all other cases of just detention, the vessel detained shall be sent to the nearest convenient and safe port for trial and judgment according to law.

Article XXVI

And whereas it frequently happens that vessels sail for a port or place belonging to an enemy, without knowing that the same is besieged, blockaded, or invested, it is agreed, that every vessel so circumstanced may be turned away from such port or place, but shall not be detained; nor shall any part of her cargo, if not contraband, be confiscated, unless, after having been warned of such blockade or investment by the commanding officer of a vessel, forming part of the blockading forces, she again attempt to enter, but she shall be permitted to go to any other port or place, the master or supercargo may think proper. Nor shall any vessel of either party, that may have entered into such port or place before the same was actually besieged, blockaded, or invested by the other be restrained from leaving it with her cargo; nor if found therein before or after the reduction and surrender, shall such vessel or her cargo be liable to seizure, confiscation, or any demand on the score of redemption or restitution; but the owners thereof shall remain in

the undisturbed possession of their property. And if any vessel, having thus entered the port before the blockade took place, shall take on board a cargo, after the blockade be established, and attempt to depart, she may be warned by the blockading forces, to return to the blockaded port, and discharge the said cargo; and if, after receiving such warning, the vessel shall persist in going out with the cargo, she shall be liable to the same consequences, as in the case of a vessel attempting to enter a blockaded port after having been warned off by the blockading forces.

Article XXVII

To prevent disorder and irregularity in visiting and examining the vessels and cargoes of both the contracting parties, on the high seas, they have agreed, mutually, that whenever a vessel of war, public or private, shall meet with a neutral of the other party, the former shall remain at the greatest distance compatible with the possibility and safety of making the visit under the circumstances of wind and sea and the degree of suspicion attending the vessel to be visited and shall send one of her small boats with no more men than may be necessary to execute the said examination of the papers concerning the ownership and cargo of the vessel, without causing the least extortion, violence, or ill-treatment in respect of which, the commanders of said armed vessel, shall be responsible with their persons and property; for which purpose, the commanders of said private armed vessels shall, before receiving their commissions, give sufficient security, to answer for all the injuries and damages they may commit. And it is expressly agreed that the neutral party shall in no case be required to go on board of the examining vessel for the purpose of exhibiting the ship's papers; nor for any other purpose whatever.

Article XXVIII

Both contracting Parties likewise agree, that when one of them shall be engaged in War, the vessels of the other must be furnished with sea letters, patents or passports, in which shall be expressed the name, burthen of the vessel and the name and place of residence of the owner, and master, or Captain, thereof, in order that it may appear that the vessel really and truly belongs to citizens of the said other party. It is also agreed, that such vessels being laden, besides the said sea letters, patents, or passports, shall be provided with Manifests or certificates, containing the particulars of the cargo and the place where it was taken on board, so that it may be known whether any part of the same consists of contraband or prohibited articles—which certificates shall be made out, in the accustomed form, by the authorities of the port whence the vessel sailed: without which requisites the vessel may be detained, to be adjudged by the competent tribunales and may be declared good and legal prize, unless it shall be proved, that the said defect or omission was owing to accident, or unless it shall be satisfied, or supplied, by testimony

equivalent in the opinion of the said tribunals, for which purpose there shall be allowed a reasonable length of time to procure and present it.

Article XXIX

The preceding stipulations relative to the visit and examination of vessels, shall apply only to those which sail without convoy; for when said vessels shall be under convoy, the verbal declaration of the commander of the convoy, on his word of honor, that the vessels under his protection belong to the nation whose flag they carry, and when they are bound to an enemy's port, that they have no contraband goods on board, shall be sufficient.

Article XXX

It is further agreed, that in all prize cases the courts specially established for such causes, in the country to which the prizes may be conducted, shall alone take cognizance of them. And whenever such courts of either party shall pronounce judgment against any vessel, merchandise, or property, claimed by the citizens of the other party, the sentence or decree shall set forth the reasons or motives on which the same shall have been founded, and an authenticated copy of the sentence, or decree and of all the proceedings, connected with the case shall, if demanded, be delivered to the commander, or agent, of the said vessel, merchandise or property, without any excuse or delay, upon payment of the established legal fees for the same.

Article XXXI

Whenever one of the contracting parties shall be engaged in war with another Nation, no citizen of the other contracting party shall accept a commission or letter of marque, for the purpose of assisting or co-operating hostilely with the said enemy against the said party so at war, under pain of being treated as a pirate.

Article XXXII

If, which is not to be expected, a rupture should at any time take place between the two contracting nations, and they should engage in war with each other, they have agreed, now for then, that the merchants, traders, and other citizens of all occupations of either of the two parties, residing in the cities, ports and dominions of the other, shall have the privilege of remaining and continuing their trade and business therein, and shall be respected and maintained in the full and undisturbed enjoyment of their personal liberty and property, so long as they conduct themselves peaceably and properly and commit no offence against the laws. And, in case their acts should render them justly suspected, and having thus forfeited this privilege, the respective governments should think proper to order them to leave the country, the term of twelve months, from the publication or intimation of the order therefor, shall be allowed them, in which to arrange and settle their affairs and

remove with their families, effects and property; to which end, the necessary safe conduct shall be given to them, which shall serve as a sufficient protection, until they arrive at the designated port and there embark; but this favor shall not be extended to those, who shall act contrary to the established laws. It is, nevertheless, understood, that the respective governments may order the persons so suspected to remove, forthwith, to such places in the interior as may be designated.

Article XXXIII

In the event of a war or of any interruption of friendly intercourse between the High Contracting Parties, the money, private debts, shares in the public funds, or in the public or private banks, or any other property whatever, belonging to the citizens of the one party in the territories of the other, shall in no case be sequestrated, or confiscated.

Article XXXIV

The High Contracting Parties desiring to avoid all inequality in their public communications and official intercourse, agree to grant to their Envoys, Ministers, Chargés d'Affaires and other Diplomatic Agents, the same favors, privileges, immunities and exemptions, that those of the most favored nations do or shall enjoy: it being understood that the favors, privileges, immunities and exemptions granted by the one party, to the Envoys, Ministers, Chargés d'Affaires or other Diplomatic Agents of the other party, or to those of any other Nation, shall be, reciprocally, granted and extended to those of both the High Contracting Parties respectively.

Article XXXV

To protect more effectively the Commerce and Navigation of their respective citizens, the United States of America and the Republic of Peru agree to admit and receive, mutually, Consuls and Vice Consuls, in all their ports open to foreign Commerce, who shall enjoy, within their respective Consular districts, all the rights, prerogatives, and immunities of the Consuls and Vice Consuls of the most favored Nation, but, to enjoy the rights, prerogatives and immunities which belong to them in virtue of their public character, the Consuls and Vice Consuls shall, before exercising their official functions, exhibit, to the government to which they are accredited, their Commissions or patents in due form; in order to receive their *exequatur,* after receiving which, they shall be acknowledged, in their official characters, by the authorities, magistrates and inhabitants of the district in which they reside. The High Contracting Parties, nevertheless, remain at liberty to except those ports and places, where the admission and residence of Consuls or Vice Consuls may not seem convenient, provided that the refusal to admit them shall likewise extend to those of all nations.

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Article XXXVI

The Consuls, Vice Consuls, their officers and persons employed in their Consulates, shall be exempt from all public service and from all kinds of taxes, imposts and contributions, except those which they shall lawfully be held to pay on account of their property or commerce and to which the citizens and other inhabitants of the country in which they reside are subject, they being in other respects subject to the laws of the respective countries. The archives and papers of the Consulates shall be inviolably respected and no person, magistrate, or other public authority, shall, under any pretext, interfere with or seize them.

Article XXXVII

The Consuls and Vice Consuls shall have power to require the assistance of the public authorities of the country in which they reside, for the arrest, detention and custody of deserters from the vessels of War or merchant vessels of their nation; and where the deserters claimed shall belong to a merchant vessel, the Consuls or Vice Consuls must address themselves to the competent authority and demand the deserters in writing, proving by the ship's roll, or other public document, that the individuals claimed are a part of the crew of the vessel from which it is alleged that they have deserted, but should the individuals claimed form a part of the crew of a vessel of War, the word of honor of a commissioned officer, attached to the said vessel, shall be sufficient to identify the deserters; and when the demand of the Consuls or Vice Consuls shall, in either case, be so proved, the delivery of the deserters shall not be refused. The said deserters when arrested shall be delivered to the Consuls or Vice Consuls, or at the request of these, shall be put in the public prisons and maintained at the expense of those who reclaim them, to be delivered to the vessels to which they belong or sent to others of the same nation; but if the said deserters should not be so delivered or sent within the term of two months, to be counted from the day of their arrest, they shall be set at liberty and shall not be again apprehended for the same cause. The High Contracting Parties agree, that it shall not be lawful for any public authority or other person, within their respective dominions to harbor or protect such deserters.

Article XXXVIII

For the purpose of more effectually protecting their commerce and navigation, the two contracting parties do hereby agree to form, as soon hereafter as may be mutually convenient, a consular convention, which shall declare specially the powers and immunities of the Consuls and Vice Consuls of the respective parties.

Article XXXIX

Until the Conclusion of a Consular Convention, the High Contracting Parties agree that, in the absence of the legal heirs or representatives, the Consuls or Vice Consuls of either party shall be, *ex officio,* the Executors or Administrators of the citizens of their nation, who may die within their Consular jurisdictions, and of their countrymen dying at sea, whose property may be brought within their district. The said Consuls or Vice Consuls shall call in a Justice of the peace, or other local authority, to assist in taking an inventory of the effects and property left by the deceased, after which the said effects shall remain in the hands of the said Consuls, or Vice Consuls, who shall be authorised to sell, immediately, such of the effects, or property, as may be of a perishable nature, and to dispose of the remainder, according to the instructions of their respective Governments. And where the deceased has been engaged in Commerce, or other business, the Consuls or Vice Consuls shall hold the effects and property, so remaining, until the expiration of twelve calendar months; during which time the creditors, if any, of the deceased, shall have the right to present their claims or demands against the said effects and property, and all questions, arising out of such claims or demands, shall be decided by the laws of the country wherein the said citizens may have died. It is understood, nevertheless, that if no claim or demand shall have been made against the effects and property of an individual so deceased, the Consuls or Vice Consuls at the expiration of the twelve calendar months, may close the estate and dispose of the effects and property in accordance with the instructions from their own Governments.

Article XL

The United States of America and the Republic of Peru, desiring to make as durable as circumstances will permit the relations established between the two parties, in virtue of this Treaty of Friendship, Commerce and Navigation, declare solemnly, and agree as follows:

1st The present Treaty shall remain in force for the term of ten years, from the day of the exchange of the ratifications thereof, and further, until the end of one year after either of the High Contracting Parties shall have given notice to the other of its intention to terminate the same, each of them reserving to itself the right of giving such notice, to the other, at the end of the said term of ten years. And it is hereby agreed between the parties, that, on the expiration of one year after such notice shall have been received by either of them, from the other party as above mentioned, this Treaty shall altogether cease and determine.

2dly If any citizen or citizens, of either party, shall infringe any of the Articles of the Treaty, such citizen or citizens shall be held personally responsible therefor, and the harmony and good understanding between the two

nations, shall not be interrupted thereby,—each party engaging in no way to protect the offender or offenders, or to sanction such violation under pain of rendering itself liable for the consequences thereof.

3dly Should, unfortunately, any of the provisions contained in the present Treaty be violated or infringed in any other manner whatever, it is expressly stipulated and agreed that neither of the contracting parties shall order or authorise any act of reprisals, nor declare or make war against the other, on complaint of injuries or damages resulting therefrom, until the party considering itself aggrieved, shall first have presented to the other a statement or representation of such injuries or damages, verified by competent proofs and demanded redress and satisfaction, and the same shall have been either refused or unreasonably delayed.

4thly Nothing contained in this Treaty shall, however be construed to operate contrary to former and existing public treaties with other Nations or Sovereigns.

The present Treaty of Friendship, Commerce and Navigation shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by the President of the Republic of Peru, with the authorisation of the Congress thereof, and the ratifications shall be exchanged, at Washington, within eighteen months from the date of the signature hereof, or sooner if possible.

In faith whereof, we the Plenipotentiaries of the United States of America and of the Republic of Peru have signed and sealed these presents.

Done at the city of Lima on the twenty sixth day of July, in the year of Our Lord one thousand eight hundred and fifty one.

J. Randolph Clay [seal]
J. Cmo Torrico [seal]