

"It is clear," continued the letter, "that the late revocation of Mr. Trist's powers, not known until now, and not yet officially communicated to the Mexican government, cannot have the effect of invalidating or cancelling what has been agreed upon in due and proper time. . . . That which is done by an agent with adequate powers prior to their revocation, or prior to his receipt of notice of revocation, is valid and in full force, more especially where there has been a positive acceptance by the other party. These principles, so well known and so well founded in natural reason and in every system of law, though they may not go so far as to compel Mr. Trist to conclude a treaty with us, assuming his powers have been revoked, do certainly require his government to continue the negotiations begun in due season by their own agent and accepted forthwith by our government."¹

For several days therefore Couto and his associates reasoned with Trist and urged him not to leave Mexico. Every argument that could be drawn from the situation of the two countries, every artful flattery that could be devised, was employed. Scott himself was on the side of the Mexicans. He urged Trist to stay and finish the good work he had begun, and he also encouraged the Mexican commissioners by the expression of a confident belief that any treaty Trist might sign would be duly ratified at Washington.² Trist, however, for several days remained firm. On November 24 he wrote officially to Peña y Peña announcing his recall and the revocation of his powers, and he informed the State Department that he would start for home as soon as Scott could conveniently send a train to Vera Cruz.³

¹ Peña y Peña to Couto, Nov. 24, 1847; Roa Bárcena, *Invasion Norte-Americana*, 583. This author had access to copies of the private correspondence between Peña and Couto, letters of Don Luis de la Rosa, communications both official and private between the Mexican government and its commissioners, drafts of the treaty of Guadalupe-Hidalgo, notes on various points that came up in the course of the negotiations, etc. These papers were collected by Señor Couto with the intention of writing an account of the negotiations, but they were never published.—(*Ibid.*, 589, note.)

² Scott's *Autobiography*, 576. It seems likely that both Scott and Trist believed that the administration now wished for much more of Mexico than California and New Mexico, and would therefore be much vexed at the signing of a treaty on the lines of Trist's original instructions, but that public opinion would force its ratification in spite of the administration.

³ Trist to Peña, Nov. 24, 1847; Trist to Buchanan, Nov. 27, 1847; Sen. Doc. 52, 30 Cong., 1 sess., 231, 230.

On the fourth of December Scott wrote to the War Department that "Mr. Trist will go down with the next train."¹

But before Scott wrote, Trist had changed his mind and had finally determined to remain in Mexico. His decision was verbally announced to the Mexican commissioners on the third of December.

"Mr. Trist has given us to understand," Couto reported, "that he is disposed to assume the responsibility of a treaty which he can take with him to Washington, where, in his opinion, it will be approved by the Senate. He is willing, if there is an assurance that the negotiation proceeds on the basis of the territorial demands of the United States, to withdraw the note in which he gave notice of the revocation of his powers, and to answer your communication in regard to the appointment of commissioners by saying that, on his part, he has no objection to continue the negotiation broken off in consequence of the events of September. He has informed us, apparently with complete frankness and good faith, that he and General Scott are sincerely desirous of peace, and that a continuance of the war will end by ruining Mexico and by producing grave complications in the internal affairs of the United States."²

On the next day after this announcement Trist wrote to Thornton at Querétaro confirming the news, and giving the reasons for his change of purpose.

"I am now resolved, and committed," he wrote, "to carry home with me a treaty of peace, if the Mexican government feel strong enough to venture upon making one on the basis, as regards boundary, of the project originally presented by me. . . . If they feel able to make and carry through a treaty on this basis, it would be utterly idle to talk or think for an instant of any other, and I cannot listen to a single word on the subject; let them say the word and the treaty shall be made. If they do not feel thus able, let them surrender at once to the Puros, and dismiss forever all thoughts of a treaty. . . ."

"I should not now make the offer but for my clear and perfect conviction on these three points: *First*, that peace is still the desire of my government; *Secondly*, that if the present opportunity be not seized *at once*, all chance for making a treaty *at all* will be lost for an indefinite period—probably forever; *Thirdly*, that this is the utmost point to which the Mexican government can by any possibility venture. . . ."

¹ Scott to Marcy, Dec. 4, 1847; *ibid.*, 144.

² Couto to Peña y Peña, Dec. 3, 1847; Roa Bárcena, 590.

"What is my line of duty to my government and my country in this most extraordinary position in which I find myself? Knowing, as I do, that peace is the earnest wish of both, is it, *can* it be my duty to allow this last chance for peace to be lost, by my conforming to a determination of that government, taken with reference to a supposed state of things in this country entirely the reverse of that which actually exists? Upon full reflection, I have come to the conclusion that my duty is, to pursue the opposite course; and upon this conclusion I have taken my stand."¹

Two days later Trist sent off a more than usually long and involved despatch to the State Department, in which he enclosed a copy of his letter to Thornton, defiantly announced his intention to disobey orders, and developed his reasons for doing so. Incidentally, he also discussed the character of General Pillow (just then Scott's *bête noire*), the wisdom of Scott in making the armistice in August, the folly and wickedness of the Washington *Union* (Polk's newspaper organ), the question of Santa Anna's sincerity in the former negotiations, the boundary of Texas, and the President's weakness in trusting Pillow—"an intriguer of unimaginable and incomprehensible baseness."² It is unnecessary to analyze this tedious production. It is enough to say that its tone was extremely insolent toward the American administration, and that there ran through it "the thinly disguised innuendo that the President had changed his plans and now favored the annexation of all Mexico."³

The Mexican government having thus succeeded in persuading the American agent to remain and treat for peace, it might have been supposed that they would have been eager to seize the favorable moment and endeavor to get him committed to definite terms; but *mañana* was again the

¹ Trist to Thornton, Dec. 4, 1847; Sen. Doc. 52, 30 Cong., 1 sess., 266-268. Italics in original. The printed copy omits the name of the person to whom the letter was written, but the archives in Washington and London show that it was addressed to Thornton.

² Trist to Buchanan, Dec. 6, 1847; *State Dept. MSS.* The greater part of this despatch is printed in Sen. Doc. 52, 30 Cong., 1 sess., 231-266.

³ J. S. Reeves, "The Treaty of Guadalupe Hidalgo," *Amer. Hist. Rev.*, X, 309-324; and see "The United States and Mexico, 1847-1848," by E. G. Bourne, *Amer. Hist. Rev.*, V, 491-502.

word, and the government found new pretexts for delay. When the subject was discussed by Thornton with Peña y Peña the latter explained that the Mexican commissioners must be confirmed by the Senate, or, during its recess, by the council of government, before they could act; that he was convinced the then existing council would not confirm the commissioners, especially Cuevas, but that the new Congress would meet in January, and he professed himself sure of their approval. He had therefore written to the three commissioners, in the city of Mexico,

"desiring them to assure Mr. Trist that on the installation of the new Congress, he should immediately demand their sanction for the new commissioners, and would then give them instructions on the basis proposed by Mr. Trist, if the latter considered himself justified in waiting till that time."

Thornton expressed himself as very much afraid that this delay would be fatal.¹ And Couto wrote that confirmation by the Senate in such a case was unnecessary, as was shown by the practice theretofore followed.²

For about three weeks the doubts professed by Peña y Peña prevented all formal negotiations, although Trist privately met the Mexican commissioners from time to time, and some progress was made toward coming to an understanding. Indeed, on December 29 Trist wrote that, "ac-

¹ Thornton to Palmerston, Dec. 11, 1847, No. 21; *F. O. MSS.*

² Roa Bárcena, 588. A similar question has been several times discussed in the United States, one of the cases in point being that of Trist himself. A number of instances involving the power of the President of the United States to appoint, without the advice and consent of the Senate, agents for the purpose of conducting negotiations with foreign countries, are collected in Moore's *International Law Digest*, IV, 452-456. The subject was debated at some length in the Senate in 1888 in connection with the unratified Bayard-Chamberlain Fisheries Treaty, which was negotiated by the Secretary of State assisted by Messrs. Angell and Putnam, who then held no official position and had not been nominated to or confirmed by the Senate. The soundest doctrine seems to be that stated by Senator Sherman. "The President of the United States has the power to propose treaties, subject to ratification by the Senate, and he may use such agencies as he chooses to employ—except that he cannot take any money from the Treasury to pay these agents without an appropriation by law. . . . In my judgment, he has a right to use such means as are necessary to bring about any treaty."—(Cong. Record, Aug. 7, 1888, p. 7287.)

ording to every probability, a treaty will be signed in the course of a week from this time," and that it would be ratified by the Mexican Congress early in January, although he added that "the inability of the government to command even the small sum required to provide for the travelling expenses of the members" made the presence of a quorum doubtful.¹ Meanwhile a new negotiator had appeared on the scene in the person of Mr. Percy W. Doyle, the British secretary of legation.

Doyle, who had been absent in England on leave, reached Vera Cruz early in December, was escorted up by a troop of Louisiana volunteer cavalry, and arrived in the city of Mexico on the eleventh of December. Two days later he wrote to the Foreign Office an account of the state of the negotiations.

"Señor Atristain, one of the Commissioners," he reported, "called on me as soon as I reached Mexico, to say that he was about to start for Querétaro on a Secret Mission to persuade the General Government to authorize him and his colleagues to meet Mr. Trist, who had declared to him, that he will be obliged, in the case of the failure of this attempt, to leave the country, and that in such a case no proposition for Peace will be received except at Washington.

"This matter has been kept most secret by both Parties. Señor Atristain begged me to remain here for the present, as he said, that should he succeed in obtaining leave to treat with Mr. Trist I should be of great use in smoothing down difficulties which might otherwise prove most serious."

Doyle further wrote that he had consented to remain at the city of Mexico instead of going on to Querétaro, and that Atristain had then asked whether it was true that England would interfere to support Mexico, and whether she would guarantee the execution of any treaty that might be made with the United States. Reports, he said, were current to that effect, and it was supposed Doyle would have brought new instructions from England; but Doyle explained that Lord Palmerston had merely told him to use his good offices whenever called upon to do so, and that "I could not inter-

¹ Trist to Buchanan, Dec. 29, 1847; Sen. Doc. 52, 30 Cong., 1 sess., 275.

fere in any other way, nor could I think for an instant of offering any sort of guarantee on the part of Great Britain."¹

The ideas of British interposition to shield Mexico in the last resort and of a British guarantee of the treaty of peace were not novel. Of the first, Peña had spoken to Thornton in November, saying that the greatest difficulty which the government had had to encounter was the confidence of the war party that Great Britain would come to the aid of Mexico, a notion which Thornton did his best to dispel by writing a note to Peña in which he explained the determination of her Majesty's government to observe the strictest neutrality.²

The other notion, that Great Britain might consent to guarantee the due observance of a treaty of peace with the United States, had been brought forward in writing in the course of the August negotiations, though Trist had left it unanswered.³ The subject was also submitted to Lord Palmerston on September 21, 1847, in a note from Señor Mora, then Mexican minister in London; to which Palmerston replied on October 7, declining to give such a guarantee. The same question was again put verbally to Thornton by Couto in October, and Thornton at that time answered that he believed the British government would not be inclined to enter into such an engagement, and expressed his "firm conviction" that the United States government would not agree to it.⁴ Thornton's reply was, later on, approved by Palmerston.

"It is highly improbable," the latter wrote, "that the United States would be a party to an application to Great Britain to guarantee a Treaty between the United States and Mexico, and without such an application from both parties such an interference of Great Britain would be tantamount to an alliance with one party contingently against the other."⁵

¹ Doyle to Palmerston, Dec. 13, 1847, No. 3; *F. O. MSS.*

² Thornton to Palmerston, Nov. 26, 1847, No. 14; *ibid.*

³ See page 515, above.

⁴ Thornton to Palmerston, Oct. 29, 1847, No. 7; *ibid.*

⁵ Palmerston to Thornton, Dec. 28, 1847, No. 2; *ibid.*

Couto still hoped to find Doyle less positive than Thornton, but Doyle was able to produce a copy of Palmerston's reply to Mora of October 7, which was decisive.¹

Two or three weeks after Doyle's interview with Couto, Peña y Peña, under pressure from all sides, finally yielded his scruples, and instructed the commissioners to go on with the negotiations; and by that time four points were thoroughly understood:

1. Mexico was to surrender Texas with the Rio Grande as a boundary, and also all of New Mexico and Upper California.²

2. Great Britain would lend its good offices, but would not otherwise intervene.

3. Great Britain would not be a party to the treaty or guarantee its performance.

4. The United States would pay a pecuniary compensation to Mexico.

Nevertheless, the instructions sent to the Mexican commissioners on December 30, on their face, ignored this understanding, and began with suggestions which, says Roa Bárcena, were undoubtedly made as mere matters of form (*por exigencias de forma*). The commissioners, in the first place, were to endeavor to procure the immediate retirement of the American army north of the Rio Grande and the Gila River. In the next place, the American pretensions with respect to Mexico were to be passed upon by a congress of representatives of all the American nations, by whose decision the

¹ Doyle to Palmerston (postscript), Dec. 13, 1847, No. 3; *ibid.* The Mexican commissioners did, however, try to get Trist to join them in requesting the British government to guarantee the execution of the treaty, but Trist "declared that his Government would not hear of such a thing"; and, according to Couto, Trist always showed "great irritation whenever that question was entered upon."—(Doyle to Palmerston, March 14, 1848; *ibid.*)

² The words "New Mexico and California" were understood by all parties to include the whole of northern Mexico from Texas to the Pacific Ocean, although the boundaries of the two provinces had never been defined and the territory between their acknowledged jurisdictions was uninhabited and all but unknown. See Cardinal Goodwin, "The Question of the Eastern Boundary of California in the Convention of 1849," *S. W. Hist. Quar.*, XVI, 227-229, where the author refers to several maps giving widely differing boundaries. Disturnell's map of Mexico (published in 1847) was, however, expressly accepted as authority by the treaty of Guadalupe Hidalgo.

United States must agree to abide; or, if this could not be arranged, an effort should be made to have the matter submitted to the arbitration of a friendly power.

Having paid this tribute to appearances, the Secretary of Relations then proceeded to business. The boundary line was to follow the Rio Grande to a point two leagues north of El Paso, then to the source of the Gila River, down the Gila to the Colorado, and then to the Pacific to a point north of the village of San Diego. The boundaries were to be guaranteed by some strong and friendly power; the territory ceded was to be promptly organized into states or territories; the property held for religious purposes was to be protected; the validity of grants of land previously made by Mexican authorities was to be recognized; the United States government was to assume all claims of American citizens against Mexico, and was to agree never to annex any more Mexican territory; the American armies were to be withdrawn immediately upon the signing of the treaty; all captured artillery and munitions of war were to be restored, and the custom-houses were to be at once returned to the Mexican authorities.

These, with some other matters of less importance, constituted the general instructions. By separate documents the commissioners were instructed to endeavor to get the line of the Nueces, instead of the Rio Grande, and they were only to yield this point if the treaty could not otherwise be made; and they were not to accept less than thirty millions as compensation from the United States for the cessions of territory. Finally, by secret instructions (probably inspired by Thornton), they were empowered to receive payment in bonds of the English debt, of the latest issue, at a price not more than ten per cent over the average price on the London market during the previous six months.¹

These instructions from Querétaro reached the city of Mexico on the first day of January, 1848, and on the next

¹ Roa Bárcena, 595. A summary of the points actually presented by the commissioners is annexed to a despatch from Doyle to Palmerston, Jan. 14, 1848, No. 10; *F. O. MSS.* The point last mentioned above was not presented.

day the first official conference was held, and the formalities were disposed of. On the following days the negotiators got fairly down to business. Trist explained that the line of the Rio Grande and the inclusion of San Diego in the cession of Upper California was a *sine qua non*; but he made no difficulties as to the proposed clauses relative to the civil rights of the inhabitants of the ceded territories. He also said he would not pay Mexico more than fifteen million dollars, and waiving for the time being the final adjustment of these points, the Mexican commissioners prepared a draft treaty which they were willing to agree to.

In the meantime Anaya's term of office had come to an end. He had been elected to hold office only to the eighth of January, by which time it was expected that the new Congress would have assembled. No quorum of Congress, however, appeared then, or for many months afterward, and the presiding judge of the Supreme Court once more stepped into the Presidency. Peña's re-elevation to that dignity left open the office of Minister of Relations, and Luis de la Rosa was again appointed to that post; so that the administration was now composed of precisely the same persons as in the first part of November.

The temporary President and his Minister of Relations, to whom the essential points of boundary and compensation were referred, were not nearly so ready to yield to Trist's exigencies as the better-informed commissioners in the city of Mexico. On January 14 Rosa wrote that the government disapproved the boundary line as laid down by Trist, and he also again insisted that the sum to be paid by the United States should not fall below thirty millions. A week later, in reply to urgent letters from the commissioners, he again wrote, declining to give up San Diego or to surrender any portion of the states of Sonora or Chihuahua.

While Rosa was thus trying to get better terms—although he was in effect presented with an ultimatum to which he could only answer *yes* or *no*—the commissioners were becoming greatly alarmed lest their efforts should, after all, prove vain. They had tried from the very first

to get Scott to agree to an armistice pending negotiations; but Scott had had a lesson on the subject and refused. The fact was, however, that he was not strong enough for weeks after the occupation of the capital to undertake any forward movement, and he seems to have given the commissioners some rather vague assurances to the effect that he would not take any serious hostile steps while negotiations were pending. For these reasons the only detachments he sent out were to such relatively near-by towns as Toluca, Cuernavaca, and Pachuca, although his orders required him "to carry on further aggressive operations; to achieve new conquests; to disperse the remaining army of the enemy."¹ To the War Department he announced, however, the intention of occupying Zacatecas and San Luis Potosí as soon as he was sufficiently reinforced,² and he doubtless expressed the same purpose to others. By the middle of January the time for renewed aggressive operations seemed to have come.

"Marshall's division," the Mexican commissioners wrote, "arrived yesterday, and General Scott, as the English chargé d'affaires told us to-day, can no longer suspend the movements for military occupation of the country unless he has complete assurance that the treaty will be signed."³

Any general advance of the American troops they looked forward to with dismay, for they feared it would dissipate whatever sentiment there was in favor of peace; and their alarm was greatly increased by the news, which reached the city of Mexico on the seventeenth of January, that the state of San Luis Potosí had "pronounced" against the government at Querétaro. It was also reported that Guanajuato, Jalisco, and Zacatecas would join in the movement.

¹ Marcy to Scott, Oct. 6, 1847; Sen. Doc. 52, 30 Cong., 1 sess., 138.

² Scott to Marcy, Nov. 27, 1847; *ibid.*, 140. For a general review of Scott's military movements during the period following the capture of Mexico reference may be made to his *Autobiography*, 552-584, and Scott's despatches of Dec. 15 and 17, 1847, and Jan. 6, 1848, in H. R. Doc. 60, 30 Cong., 1 sess., 1050, 1046, 1061.

³ Couto and others to Rosa, Jan. 23, 1848; Roa Bárcena, 602.

"As your Lordship may suppose," Doyle wrote, "this event has caused great consternation among the Peace party in this Country; for should this Revolution even partially prove successful, the hopes we have had of concluding a Peace, will, I fear, for the present be destroyed. The General Government has no money or means of resisting this movement, and other States may soon be tempted to follow the example given by San Luis, unless means are found to put it down at once. General Scott told me yesterday he was determined to March upon San Luis, and defend the General Government, but even this step might prove fatal to them, as their existence in the eyes of the nation would then be guaranteed by the Americans. . . . Every exertion is being made by the friends of the Government to encourage them to resist this attempt at Revolution, as well as to get the Peace signed without any further loss of time; for the Peace once signed, events might take a very different turn in this Country."¹

However, the attempted revolution in San Luis failed for lack of support—the handful of government troops stationed there remaining loyal. So the anxious days passed by, but without any final decision from Querétaro as to the important matters of boundary and compensation. But while Peña and Rosa shivered on the brink, much time and labor had been devoted by the commissioners to the framing of the other articles of the treaty.

"It is hardly to be conceived," wrote Doyle, "what importance is attached in this country to words, and the Commissioners, as they said to me, are most anxious Mr. Trist should not alter their wording of the different Articles, as they were not afraid of their substance being ratified, but their wording might present great difficulties. They told me as a proof of this that the Congress refused to ratify the Treaty with France, because in mentioning the indemnity of 600,000 Dollars to be paid the word 'Pagar' was used instead of 'Entregar.'"²

Doyle, it seems, had constantly been consulted on the terms of the treaty, and was appealed to on both sides; but there was only one detail concerning which he showed much

¹ Doyle to Palmerston, Jan. 19, 1848, No. 12; *F. O. MSS.* See also Trist to Buchanan, Jan. 12, 1848; Sen. Doc. 52, 30 Cong., 1 sess., 278.

² Doyle to Palmerston, Jan. 14, 1848, No. 10; *F. O. MSS.* *Pagar*=to pay. *Entregar*=to deliver. Trist's account of the method of drafting the treaty will be found in Sen. Doc. 52, 30 Cong., 1 sess., 288.

interest, and that was the proposed right of transit over the Isthmus of Tehuantepec. Mackintosh, the British consul, had a concession at Tehuantepec which he considered extremely valuable. Trist talked it over with Mackintosh (who suggested selling his rights to the United States), but did not press the point with the commissioners, and nothing was said about it in the treaty as drafted.

Trist, however, could doubtless have got this or anything else he really wanted; for his position, whenever he chose to exert pressure, was one of extraordinary diplomatic strength. In the first place, the mere fact that he was acting in open defiance of orders was of great value, for he could always threaten to drop the negotiations in compliance with his instructions if the demands he made were not agreed to. Again, his distance from Washington was an advantage, as he could refuse to permit the delay of a reference for further instructions; and, indeed, it was apparent that if he had asked for instructions, the reply would have been only a reiterated order to return home. And finally the backing of Scott's small but highly efficient army, capable of rapidly overrunning nearly the whole of Mexico, gave weight to his words.

By the last week in January the discussions of the commissioners were concluded. Nothing remained to be said. The form of the treaty was settled, and all that was needed was to secure the approbation of the authorities at Querétaro.¹ Nearly two months had by this time elapsed since Trist had notified the Secretary of State that he would not obey the order for his recall; and it was evident that new and more imperative orders might come from Washington at any moment. Scott might be ordered to place him under arrest and send him out of the country; and if the treaty, over which so much time had been spent was to be signed at all, it must evidently be done at once. Trist therefore waited

¹ "The treaty agreed upon between myself and the Mexican plenipotentiaries will, according to every probability, be signed immediately upon the return of an express which has just been despatched to Querétaro."—(Trist to Buchanan, Jan. 25, 1848; Sen. Doc. 52, 30 Cong., 1 sess., 280.)