

AWARD OF THE EMPEROR OF AUSTRIA AS TO THE
INTERPRETATION OF THE TREATY OF MANAGUA BETWEEN
THE UNITED KINGDOM AND NICARAGUA, DECISION OF 2 JULY
1881*

SENTENCE ARBITRALE DE L'EMPEREUR D'AUTRICHE À PROPOS
DE L'INTERPRÉTATION DU TRAITÉ DE MANAGUA ENTRE LE
ROYAUME-UNI ET LE NICARAGUA, DÉCISION DU 2 JUILLET
1881**

* Reprinted from John Basset Moore, *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. V, Washington, 1898, Government Printing Office, p.4954.

** Reproduit de John Basset Moore, *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. V, Washington, 1898, Government Printing Office, p.4954.

* * * * *

We, Francis Joseph the First, by the grace of God, Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary:

Whereas the Government of Her Britannic Majesty and the Government of Nicaragua have consented to submit to our arbitration the question in dispute between them of the interpretation of certain articles of the treaty of Managua, signed on the 28th January 1860, and whereas we declared ourselves willing to accept the office of arbitrator in this matter, we have come to the following decision, based on one of the three legal opinions which were drawn up and submitted to us at our request:

ARTICLE I. The sovereignty of the Republic of Nicaragua, which was recognized by Articles I. and II. of the Treaty of Managua of the 28th January 1860, is not full and unlimited with regard to the territory assigned to the Mosquito Indians, but is limited by the self-government conceded to the Mosquito Indians in Article III. of this treaty.

ARTICLE II. The Republic of Nicaragua, as a mark of its sovereignty, is entitled to hoist the flag of the Republic throughout the territory assigned to the Mosquito Indians.

ARTICLE III. The Republic of Nicaragua is entitled to appoint a commissioner for the protection of its sovereign rights throughout the territory assigned to the Mosquito Indians.

ARTICLE IV. The Mosquito Indians are also to be allowed to hoist their flag henceforward, but they must at the same time attach to it some emblem of the sovereignty of the Republic of Nicaragua.

ARTICLE V. The Republic of Nicaragua is not entitled to grant concessions for the acquisition of natural products in the territory assigned to the Mosquito Indians. That right belongs to the Mosquito Government.

ARTICLE VI. The Republic of Nicaragua is not entitled to regulate the trade of the Mosquito Indians, or to levy duties on goods imported into or exported from the territory reserved to the Mosquito Indians. That right belongs to the Mosquito Indians.

ARTICLE VII. The Republic of Nicaragua is bound to pay over to the Mosquito Indians the arrears of the yearly sums assured to them by Article V. of the Treaty of Managua, which arrears now amount to 30,859 dol. 3 c. For this purpose the sum of 30,859 dol. 3 c., deposited in the Bank of England, together with the interest accruing thereto in the meantime, is to be handed over to the British Government. The Republic of Nicaragua is not bound to pay back-interest ("Verzugszinsen") on the sums in arrear.

ARTICLE VIII. The Republic of Nicaragua is not entitled to impose either import or export duties on goods which are either imported into or exported from the territory of the free port of San Juan del Norte (Greytown).

The Republic of Nicaragua is, however, entitled to impose import duties on goods on their conveyance from the territory of the free port of Greytown to the territory of the Republic, and export duties on their conveyance from the territory of the Republic to the free port of San Juan del Norte (Greytown).*

Given under our hand and seal at Vienna.

FRANCIS-JOSEPH.

JULY 2, 1881.

Legal Opinion on which the Award was based — Translation

In order to appreciate and settle the differences that have arisen between Her Britannic Majesty's Government and that of the Republic of Nicaragua respecting the interpretation of some articles of the treaty concluded by them at Managua on the 28th January 1860, it is necessary to recapitulate as succinctly as possible, in so far as they bear upon the declaration of the award, the complicated relations and the conflicting claims which existed before that treaty was drawn up and which led to its conclusion.

(The following exposition, apart from the materials contained in the controversial documents of the two governments, is based upon the works cited below: Martens-Samwer, *Recueil Général de Traités*, Tome XV, pp.158-250; Von Reden, *Das Mosquito-Gebiet*, in *Petermann's Geographischen Mittheilungen*, 1856, p. 250 sq.; Samwer, *Die Gebietsverhältnisse Centralamerika's*, ebenda, p. 257 sq.; Scherzer, *Wanderungen durch Nicaragua, Honduras, und San Salvador*, 1857; P. Lévy, *Notas Geográficas y Económicas sobre la República de Nicaragua*, Paris, 1873.)

The rightful sovereignty over the territory inhabited by the Mosquito Indians on the east coast of Central America along the Caribbean Sea, but not exactly defined inland, had been long in dispute. On the one side it was claimed by those republics which had broken loose from Spain in the third decade of the present century, and which founded their claim to the Mosquito territory upon their succession to the rights of the mother country. The Spanish Crown had claimed from of old the sovereignty over the Mosquito Indians, and this claim was expressly put forward by a decree in the year 1803 regulating the territorial demarcation and the administrative distribution of the coast territory. But as neither Spain nor the colonies which had fallen away from her and attained independence had actually exercised the pretended rightful sovereignty, and consequently the asserted occupation

* Editor's note: See Mr. Evarts, Sec. of State, to Mr. Kasson, MS. Inst. to Austria, August 1, December 18, and December 26, 1879, and June 4, 1880. This award and the accompanying opinion have become obsolete as the result of the formal and voluntary incorporation of the Mosquito Indians into the Republic of Nicaragua (For. Rel. 1894, App. I.354-363.).

lacked the essential element of taking possession in fact, the Mosquito Indians were able to maintain not only their actual freedom, but also their legislative independence, and to act as a separate community. As such the Mosquito Indians entered into commercial and international relations, especially with England. The relations with that power reach back to the time immediately after the conquest of Jamaica, in the second half of the seventeenth century. They led, in the year 1720, to a formal treaty between the governor of Jamaica and the chieftain, styled "king," of the Mosquito Indians, and finally took the shape of international protection. This protectorate of England's was, however, contested not only by the Central American Republics, but also by the United States of North America, and all the more keenly inasmuch as the greatly coveted regions at the mouth of the River San Juan had acquired considerable importance in reference to commercial policy, owing to the intended construction of an interoceanic canal for the connection of the Atlantic and Pacific oceans.

When the Mosquito Indians, by the aid of England, after several vicissitudes, had got possession, in the year 1848, of the important seaport town of San Juan del Norte (Greytown), at the mouth of the San Juan River, warlike complications threatened to break out with the United States, under whose protection the Republic of Nicaragua had placed itself. In order to avert these dangers, and to obtain a basis for a uniform policy of abstention on the part of England and of the United States in regard to the regions along the intended interoceanic canal, the two states concluded the so-called Bulwer-Clayton Treaty in April 1850 (Case, Appendix, pp. 69 sq.), which, however, became itself a starting point for fresh disputes. England now sought to obtain by negotiations with the United States the groundwork for an arrangement of Central American affairs, and especially for determining the fate of the Mosquito Indians, as well as the political position of the important seaport town of San Juan del Norte (Greytown), and with this view in the first place to secure definite results by a treaty with the United States, to which both states were to endeavor to get the adhesion of the Republic of Nicaragua. This was the origin of the so-called Crampton-Webster Treaty in April 1852 (Martens-Samwer, *Recueil de Traités*, Tome XV, pp. 195 sq.), wherein England tacitly renounced the protectorate of the Mosquito Indians, and by the provisions of which the whole of the Mosquito territory situated within the bounds of Nicaragua was to come under the sovereignty of the republic, but without any exact demarcation of the territory that should remain to the Mosquito Indians in absolute and independent sovereignty (Article I.). The grounds of this treaty were not, however, accepted by Nicaragua. The republic would not allow the Mosquito Indians even a partially independent territory, but wished to see the whole coast placed under its sovereignty. As further negotiations with the United States did not attain the desired end, and as, in particular, a treaty concluded in the year 1856 (the so-called Clarendon-Dallas Treaty — Case, Appendix, pp. 72 sq.) was not ratified, England adopted the course of direct negotiations with the Republic of Nicaragua, and finally concluded the Treaty of Managua on the 28th of January 1860, which contains an adjustment of the

conflicting interests and claims. For the historical comprehension and proper realization of that treaty, the previous treaty negotiations between England and the United States are not without importance.

II. In the Treaty of Managua the protectorate over the Mosquito district was expressly given up by England (Article I. par. 2), the sovereignty of the Republic of Nicaragua over the whole district of the Mosquito Indians lying within its bounds was acknowledged under the conditions and engagements specified in the treaty (Article I. par. 1), whilst an exactly defined territory was assigned and reserved to the Mosquito Indians (Articles II., VIII.), within which they are to enjoy the right of self-government (Article III.).

The dispute between the two governments refers to the connection with each other of the coexistent sovereignty and self-government, the purport and extent of the domination appertaining to the republic on the one side, and on the other the self-regulation conceded to the Mosquito Indians.

An unprejudiced consideration of the case as it stands leads to the following results:

The sovereignty over the whole region of the coast, always claimed by the Republic of Nicaragua, has been acknowledged by the treaty. The separation of a part of that region for the maintenance or constitution of an entirely independent community of the Mosquito Indians, absolutely free with respect to political and international relations, and such as was contemplated in the treaty negotiations between England and the United States, has not been carried out.

In place of the international relation of protection heretofore existing a relation of political subjection has been created; the Mosquito Indians, in place of their former protector (England), have got a ruler (the Republic of Nicaragua), under whose political power and authority they are placed.

But, on the other hand, an exactly defined territory is assigned to the Mosquito Indians, and they have still the right of self-government within it.

The territory so reserved to the Mosquito Indians, and therefore usually called "Mosquito Reserve," forms an integral and inseparable component of the aggregate territory of the republic, a political appurtenance of the main country.

In this region, closed and parted off, the Mosquito Indians have to lead their own life and provide for their own national existence. This territory, though permanently belonging to the Republic of Nicaragua, is to be considered as primarily and immediately a territory owned by Indians, as the country of the Mosquitos. This also follows indirectly from the prohibition against the cession of this tract of land by the Mosquito Indians to a foreign person or power (Article II. par. 3). The Mosquito Indians are not allowed to make over the dominion of their country to anyone else.

Within and upon this territory the Mosquito Indians are allowed “the right of governing according to their own customs and according to any regulations which may from time to time be adopted by them, not inconsistent with the sovereign rights of the Republic of Nicaragua, themselves and all persons residing within such district. Subject to the above-mentioned reserve, the Republic of Nicaragua agrees to respect and not to interfere with such customs and regulations so established, or to be established, within the said district.” (Article III.) When we come to examine and interpret this treaty stipulation impartially, we can hardly do otherwise than admit that the concession of self-government in the sense of self-legislation and self-administration is involved in it. This result necessarily follows also from the stipulation of Article IV., according to which the Mosquito Indians are not to be prevented at any time “from agreeing to absolute incorporation into the Republic of Nicaragua on the same footing as other citizens of the republic, and from subjecting themselves to be governed by the general laws and regulations of the republic, instead of their own customs and regulations.” So long as this shall not have taken place, and the efforts of the Republic of Nicaragua in this respect have hitherto been fruitless, the Mosquito Indians have not been completely incorporated with the Republic of Nicaragua, they do not stand on the same footing as the other subjects of the republic, they are not amenable to the general laws and regulations of the republic, but they govern themselves according to their own customs and laws; until the date of such voluntary agreement *dies incertus an et quando*, the incorporation of the Mosquito district into the territory of the republic is a relative and incomplete incorporation. The Mosquito Indians are consequently in a peculiar position guaranteed to them in conformity with treaty; their territory is a district exempt from the legislation and administration of the republic, and forms an absolute legislative and administrative sphere of their own. This local self-government is the last remnant of the freedom and self-dependence claimed and exercised by the Mosquito Indians for centuries.

This self-government can not, of course, extend to foreign affairs, inasmuch as the “Mosquito Reserve” forms a political and international whole with the Republic of Nicaragua. The Mosquito Indians have, therefore, no right to enter into relations or conclude treaties with foreign states, or to send or receive envoys, or to wage war or make peace. But their self-government does extend, according to the general purport and conception of Article III., to the whole range of internal affairs, in the regulation of which the Republic of Nicaragua has undertaken not to interfere.

The position which the Government of the Republic of Nicaragua takes up and seeks to maintain in its controversial writings can not be justified.

The government of the republic denies that «une autonomie véritable, une autonomie séparée du reste de la République» (Réponse, pp. 9, 12) was conceded to the Mosquito Indians. According to the view of that government its inherent sovereignty is absolute and entire («pleine et absolue,» Réponse, pp. 4, 10), even in regard to the Mosquito district, and the republic is entitled

to enforce its dominion to the full meaning and extent thereof even on the Mosquito soil («d'être pratiquement souverain,» Exposé, pp. 4, 49-51, 63), to enjoy plenary use of paramount and governmental rights involved in sovereignty («de nommer ses employés, d'ouvrir des ports de mer, de déterminer les droits de Douane . . . en un mot, d'y établir comme dans toutes les autres parties de la nation, la constitution, et les lois de la République*,» Réponse, p. 10), and has only to refrain from any encroachment on the national customs and municipal usages («us et coutumes») of the Mosquito Indians (Exposé, pp. 5, 43; Réponse, p. 12).

This assertion is in direct contradiction with Articles I-IV., wherein the sovereignty of the republic is recognized only in a limited form ("subject to the conditions and engagements specified in the present treaty"), and it is stipulated that the "general laws and regulations of the republic" are not binding for the Mosquito Indians, to whom is conceded the right of governing, not only themselves, but all persons in general residing in Mosquitia. It is, moreover, in indirect contradiction with Article V., whereby the subvention from the republic is also granted for the maintenance of the government authorities of the Mosquitoes, "for the maintenance of the authorities to be constituted under the provisions of Article III." The assertion of the government of the republic contains a thoroughly gratuitous and unjustifiable anticipation of the absolute incorporation and complete equalization of the Mosquito Indians with the rest of the subjects of the republic, which is reserved in Article IV. for a future voluntary agreement.

If the government of the republic declares its opinion that the tribe of Mosquito Indians is an exhausted and degenerate race, incapable of education and development, and that therefore the talents and presumptions required for self-government are lacking (Réponse, pp. 4, 9), it may be said on the other hand that impartial authors, well acquainted with the facts, are not altogether of that opinion; that the Republic of Nicaragua has promised the ten years' subvention for the purpose, amongst others, of promoting "the social improvement" of the Mosquito Indians (Article V.); that they, in case of the absolute incorporation, so much striven for by the Republic of Nicaragua, are at once to enjoy the same rights as all other citizens of the republic (Article IV.); and that, according to the statement of their chief, a number of schools, etc., have already been established (Case, p. 52), whilst nothing has apparently been done for improving the position of those Mosquito Indians who live outside the reserved territory, and are completely incorporated with the Republic of Nicaragua. However that may be, this consideration ought at the time to have prevented the government of the republic from concluding the treaty of Managua on such grounds; it ought to have followed the example of the Republic of Honduras in its treaty with England, concluded at Comayagua

* Secretariat note: [sic]

on the 28th November 1859, wherein no separate territory was reserved for the self-government of the Mosquito Indians within the jurisdiction of that republic, but their absolute incorporation and immediate unconditional equalization with the rest of the subjects of the Republic of Honduras were definitely fixed. (Articles II. and III.)

The appeal of the Nicaraguan Government to the legal status of the Indians within the United States of North America is likewise inapplicable. According to the evidence of Kent (*Commentaries on American Law*, 5th edition, 1844, vol. III., p. 378 sq.), the Indian tribes in North America have always been treated “as free and independent tribes, governed by their own laws and usages, under their own chiefs, and competent to act in a national character and exercise self-government, and, while residing in their own territories, owing no allegiance to the municipal laws of the whites” (p. 384). They have occupied a position of protection under the United States, and have been considered and treated as “dependent allies.” (Kent, pp. 383, 385; Wheaton, *Eléments de Droit International*, 1848, I., p. 50 sq.; Beach-Lawrence, *Commentaire sur les Eléments de Droit International de H. Wheaton*, 1868, I., p. 264 sq.; Calvo, *Le Droit International*, 3d edition, 1880, I., sec. 69, p. 178 sq.; Rüttiman, *Das Nordamerikanische Bundesstaatsrecht*, I., 1867, p. 1 sq.). It is but quite lately that (3d March 1871) the Congress at Washington has decided that the Indian tribes are in future no longer to be regarded as independent nations, and that, without prejudice to the validity and operation of the treaties already concluded, no more treaties of alliance are to be concluded with them (*Revised Statutes of the United States*, 1873-74, sec. 2079, p. 366). Moreover, considering the diversity of geographical and ethnographical circumstances, it is quite impossible to draw a parallel. Whilst the Indian tribes in the United States live everywhere in inclosed districts and surrounded by an immense unmixed white population that overwhelms them, the Mosquito Indians (about 6,000 in number) inhabit a separated strip of coast, and the Republic of Nicaragua itself has but a feeble and mixed population (from 250,000 to 300,000 inhabitants, half Ladinos, one-third Indians, one-sixth mulattoes and blacks). (Martin, *The Statesman’s Year-Book*, 1874, pp. 543,544; Wappäus, *Handbuch der Geographie des Ehemaligen Spanischen Mittel-und Südamerika*, 1870, p. 335; Mayer, *Conversations-Lexicon*, 3d edition, Art. Nicaragua und Mosquito-Küste). The result of the foregoing discussion and statement is that the Republic of Nicaragua’s sovereignty over the district of the Mosquito Indians is not complete and unlimited, but that it is restricted and circumscribed by the right of self-government, conceded to the Mosquito Indians (Article I of the Draft¹).

¹ “P. Lévy says much the same in his work, *Notas Geográficas y Económicas sobre la República de Nicaragua* (Paris, 1873), published with the approval and pecuniary aid of the Nicaraguan Government. His observation, p. 400, is: “In regard to Nicaragua, by the *Managua convention she has taken the place of England in the protectorate of the Mosquitoes, but on the*

This connection of the Republic of Nicaragua with the «Mosquito Reserve» may be shortly described in the phrase «La République règne, mais elle ne gouverne pas.»

It must be acknowledged at once that the Republic of Nicaragua, as a sovereign of the Mosquito district, is entitled to hoist the flag of the republic as a sign of its dominion («en signe de souveraineté») in the territory of the Mosquito Indians (Draft, Article II.). Nor does the English Government oppose this claim of the government of the republic (Exposé, p. 55; Counter Case, p. 8, No. 16), although it forms an item of complaint in the memorial of the chieftain of the Mosquito Indians (Case, p. 52). It must likewise be acknowledged that the Republic of Nicaragua has the right to appoint a commissioner, who has to see that the Mosquito government does not go beyond its province and encroach upon the sovereign rights of the republic (Article III.; Draft, Article III.). But this commissioner must not meddle with the internal affairs of the Mosquito Indians, or exercise any jurisdiction in the Mosquito district. In so far as the Nicaraguan presidential decree of the 6th January 1875 (Case, p. 82) is in contradiction with this, it must therefore cease to take effect.

The Mosquito Indians can not well be forbidden from using their old flag still. But they must connect therewith a sign of the sovereignty of the Republic of Nicaragua, to which they are subject, in order that this connection with the paramount authority may be generally recognizable (Draft, Article IV.). This is the more imperative, inasmuch as even states which only exercise a protectorate have insisted that the protected state should exhibit a sign on its flag denoting the protective connection (“as a mark of the protection”).

Thus, the Ionian Islands, so long as they were under the protectorate of England, had to indicate that connection on their flag (Phillimore, Commentaries upon International Law, I. p. 96, sq.).

III. Self-administration comprises in itself the people’s own administration of their economical affairs. It is just where material interests are concerned that the right of self-government assumes special practical importance.

The Mosquito Indians have to provide from their own means for all the requirements of their separate national existence and all the costs of their self-government. They have to procure those means for themselves, and can only derive them from the natural produce of their territory and the most profitable disposal thereof. The cession to them of a territory of their own naturally includes the right of employing it to their own advantage. In consequence of

express condition that they shall acknowledge her sovereignty. The former King of Blewfields, or his lawful successors, retain a purely administrative authority over the jurisdiction that we have indicated above” (i. e., the Mosquito Reserve).”

the separate territorial and governmental position conceded to the Mosquito Indians, the district reserved to them forms a department economically dependent upon itself.

As a necessary consequence of this, the Mosquito government must have the right of granting licenses for the acquisition of the natural products of its territory (wood, caoutchouc, gum, cocoanuts, minerals, etc.) and that of levying dues on such products.

It would be against the universal principles of justice that he to whom the ground belongs should not be entitled to reap the produce of it himself or to transfer the collection of such produce to others for a consideration. The utilization of the Mosquito soil can but belong to the Mosquitoes only; therefore the Republic of Nicaragua can not be considered as entitled «de délivrer des patentes pour l'exploitation des produits naturels de la Mosquitia,» and thus deprive the Mosquitoes of their source of revenue (Draft, Article V.). The pretension to such a right on the part of the government of the republic (Exposé, p. 49, sq.) rests upon a confusion of the political idea of a sovereignty with the notion of a private right of ownership.

As the Mosquito Indians constitute a community endowed with its own self-government, under the dominion of the Republic of Nicaragua, they must be considered as also entitled to carry on their trade according to their own regulations (Article III.), and if they should deem it expedient, for the purpose of creating a revenue, to levy duties on goods that are imported into or exported from their district, they may do so.

If the government of the Republic of Nicaragua claims these rights for the republic «en sa qualité de souverain,» and asserts its privilege «de régler le commerce extérieur de la «Reserva Mosquita,» de régler le cabotage, d'ouvrir et de fermer ceux des ports pour lesquels l'une ou l'autre de ces mesures lui paraît opportune» (Exposé, pp. 51, 63), «d'imposer les droits généraux d'importation et d'exportation dans le territoire de la reserva» (Exposé, pp. 52, 53), this is only a consequence of its radically erroneous notion that the Republic of Nicaragua is entitled to the full and unlimited exercise of the rights of sovereignty even over the Mosquito territory. The assertion that the republic has a right «d'appliquer dans le territoire de la reserva les droits généraux qui régissent les autres parties de la république» (Exposé, p. 63) is altogether contrary both to Articles III. and IV. of the treaty, whereby the "general laws and regulations of the republic" are not binding in the Mosquito district, and to the right of self-government guaranteed to the Mosquitoes, for that undoubtedly comprises the exclusive right of self-taxation, both direct and indirect.

In justification of its claim to impose a duty on goods imported into Greytown and intended for consumption in the Mosquito district on their reexportation by sea from that port, the government of the Republic of Nicaragua appeals to the final clause of Article VII., whereby the constitution of San Juan del Norte (Greytown) as a free port is not to prevent the Republic

of Nicaragua from levying the usual duties on goods intended for consumption within the territory of the republic; for, as the Mosquito district also belongs to the territory of the republic, the latter must therefore be entitled to levy a duty on the goods exported to Mosquitia from the free port Greytown (Exposé, pp. 52, 53; Réponse, p. 18). But the words "territory of the republic," in the final clause of Article VII., which does not refer at all to the connection of Nicaragua with Mosquitia, can not, any more than in Article V., paragraph 2, bear the signification of the whole territory of the republic; they are only to be understood as the proper territory of the republic, exclusive of the "territory reserved for the Indians" (Article VIII.). Moreover, the levying of a duty is incompatible with the free port character of Greytown (No. V.).

The apprehension of the government of the Republic of Nicaragua that the duty-free importation of goods into the Mosquito district would cause or encourage smuggling in the other parts of the republic (Exposé, p. 51) is met by Her Britannic Majesty's Government with the objection that the frontier parts of the Mosquito district are quite impassable (Counter Case, p. 28, No. 93). Were this not the case, the Republic of Nicaragua would have no alternative but to establish an immediate customs line. The difficulty or impracticability of such an undertaking can not derogate from the right of the Mosquito Indians as once for all settled by the Treaty of Managua.

It must therefore be allowed that the Republic of Nicaragua is not entitled to regulate the trade of the Mosquito Indians, or to levy import or export duties on goods which are imported into or exported from the Mosquito district (Draft, Article VI.) Articles I. and II. of the Nicaraguan presidential decree of 4th October 1864 (Case, p. 82), which are in contradiction with this, must consequently cease to take effect.

IV. In Article V. of the Treaty of Managua the Republic of Nicaragua undertook to pay the Mosquito Indians an annuity of \$5,000 for the term of ten years, for the purpose of improving their social position and of maintaining their government authorities constituted in virtue of Article III. This annuity was to be paid half-yearly at Greytown to a person empowered by the chieftain of the Mosquitoes to receive it, and the first installment was to be paid six months after the exchange of ratifications of the Managua Treaty. This said exchange was effected on the 2d August 1860, in London.

The payment of the annuity was irregular, and soon ceased altogether. When, in November 1865, the chieftain of the Mosquito Indians died, and his cousin, a boy of 11 years old, was proclaimed his successor, the Republic of Nicaragua refused to recognize him. It is not necessary to inquire here whether there were good grounds for the refusal, or whether it was to serve as a welcome pretext for withholding the payments of the subvention. The said chieftain afterward died (since 1875), and no objection has been raised against the legitimacy of his successor. Now, as the objects for the attainment of which the subvention was promised are still the same as they were before, and

as the payment thereof is attached to no conditions whatever, there can be no doubt that the Republic of Nicaragua must be declared liable for the payment of the arrears to the amount of \$30,859.03. This sum has meanwhile been deposited by the Republic of Nicaragua in the Bank of England on condition (Case, p. 78) that upon the delivery of an award for payment it is to be made over to the British Government for the benefit of the Mosquito Indians (Draft, Article VII.).

When the Government of the Republic of Nicaragua intimates the desire to have the sum deposited in the Bank of England paid over to itself, in order that the said sum may be duly applied for the benefit of the Mosquito Indians, inasmuch as no one can be in a better position to judge of what is to be done than «le Souverain dans ses domaines, et que le territoire de Mosquitia se trouvant dans les limites et sous la juridiction de la République, il est de son devoir de s'enquérir de ses besoins pour y subvenir autant que possible, prenant toutes les mesures qui peuvent contribuer à l'avancement moral et au progrès matériel de ce district» (Réponse, p. 16), it first of all overlooks the fact that the subvention is not only to serve for the improvement of the social position of the Mosquitoes, but also for the maintenance of their own government authorities. The Nicaraguan Government hereby seeks, in a way that is radically inadmissible, to take the place of the Mosquito government, whose own business is independently to attend to and provide for the concerns and interests of the Mosquitoes. For even in the treaty which the Republic of Honduras concluded with Great Britain at Comayagua on the 28th November 1859 it was stipulated that the ten years' subvention of \$5,000 a year to be furnished by the said republic for the improvement of the intellectual and material position of the fully incorporated Mosquitoes should be paid to their chieftain (Article III, par. 2).

The Republic of Nicaragua, however, can not be called upon to pay back-interest on the subvention sum in arrear. The subvention is not, indeed, as the Government of the Republic of Nicaragua intimates (Réponse, p. 18), a pure donation («un don gratuit, un présent»), inasmuch as it was more properly promised "in consideration" of the manifold advantages which were secured to the republic in the treaty and have accrued therefrom, such as the relinquishment of the protectorate on the part of England, and the recognition of the republic's sovereignty over the whole Mosquito district, including the town of San Juan del Norte (Greytown). But, though the subvention has not the character of a pure donation, still it has the character of remunerating liberality, and the equitable nature of such an obligation precludes the liability for the payment of back-interest (Draft, Article VII.).

V. As is generally acknowledged in theory and practice, the essence of a free port consists in this, that all goods imported and exported therein free and without payment of duty remain within the jurisdiction of the port itself, either to be sold or consumed there, or to be again exported therefrom to a place in the interior or abroad. A free port, which belongs to the territory of a certain

state, and therefore is under the sovereignty of that state, is to be looked upon in regard to the customs just as a foreign country. But so soon as the goods are imported from the jurisdiction of the free port into the other part of the state territory, they may, on their entry into this territory, and consequently passing beyond the jurisdiction of the free port, be charged with an import duty. It is only in this sense that the concluding words of Article VII. of the Treaty of Managua can be understood; they are set in their true light by the stipulation immediately preceding, whereby the Republic of Nicaragua is not to be allowed to levy transit dues on goods which pass from sea to sea through the territory of the republic on the projected interoceanic canal. In like manner the goods exported from inland («les articles du pays») can not indeed be charged with an export duty when they go out of the free port, but they can be so charged on their passage from the state territory into the jurisdiction of the free port (Draft, Article VIII.). The Nicaraguan presidential decree of the 22d June 1877 (Case, pp. 92, 93), which contradicts these principles, and which has already been suspended, for so long as the dispute is pending, by presidential decree of the 10th April 1878 (Case, pp. 93, 94), for San Juan del Norte (Greytown), must therefore definitively cease to take effect for that free port.

Inasmuch as no duties at all may be levied on goods in a free port, it is equally unallowable to levy duties on imported or exported goods for the purpose of meeting the costs of the administration of the port town and of the maintenance of the free port. The means for covering such local requirements must be raised by local taxation in other forms, as, for example, by levying a tax upon the consumption of goods imported duty free. The system of providing for the costs of the administration of the town and the maintenance of the free port of Greytown, introduced by presidential decree of the 20th February 1861 (Case, pp. 88, 89), by an import duty on the goods imported there, will therefore have to make room for some other system.

There is no dispute about the right of the Republic of Nicaragua to levy "duties and charges" on ships in the free port of San Juan del Norte (Greytown) for the purposes of the port (Article VIII.).

Upon the other points brought forward by Her Britannic Majesty's Government for decision (Counter Case, pp. 32, 33, Nos. 15-19) it is not expedient to enter, inasmuch as some of them relate partly to administrative affairs and to reclamations in civil law by private persons, while, in regard to others, the necessary statistical materials and particulars of account are not within reach.

VI. The Government of the Republic of Nicaragua disputes the right of Her Britannic Majesty's government to take part in the affairs relating to the Mosquito Indians and to the free port of San Juan del Norte (Greytown), or to come forward as complainant in the present litigation, inasmuch as such a proceeding would involve an unauthorized intermeddling with the internal

concerns of Nicaragua, and a reassertion contrary to treaty of the relinquished protectorate over Mosquitia (Exposé, pp. 53, 54, 63; Réponse, pp. 16, 17).

This contention against England's *legitimitio ad causam* can not be pronounced well founded.

Then, in regard to the port of San Juan del Norte (Greytown), the Republic of Nicaragua, in Article VII. of the Managua Treaty concluded with England, undertook the engagement to constitute and declare it a free port; and such constitution and declaration did ensue by presidential decree of the 23d November 1860 (Case, p. 87). But England has a treaty right to insist also that that constitution and declaration should not be merely nominal, but that the Government of the Republic of Nicaragua should not enact any provisions and regulations incompatible with the essence and character of a free port. Now, if English merchants, settled in Greytown or trading thither, appeal to the protection and interposition of the English Government against measures on the part of the Nicaraguan Government which are prejudicial to the free port character of Greytown, and thereby to their commercial interests, and if subjects of other states join in such steps, there would be nothing herein contrary to the rules of international law or to the ordinary practice generally acknowledged as admissible.

In regard, however, to the affairs of the Mosquito Indians, it is true that England, in the Treaty of Managua, has acknowledged the sovereignty of Nicaragua and renounced the protectorate, but this still only on condition, set forth in the treaty, of certain political and pecuniary advantages for the Mosquitoes ("subject to the conditions and engagements specified in the treaty, Article I.") England has an interest of its own in the fulfillment of these conditions stipulated in favor of those who were formerly under its protection, and therefore also a right of its own to insist upon the fulfillment of those promises as well as of all other clauses of the treaty. The Government of Nicaragua is wrong in calling this an inadmissible "intervention," inasmuch as pressing for the fulfillment of engagements undertaken by treaty on the part of a foreign state is not to be classified as intermeddling with the internal affairs of that state, which intermeddling has unquestionably been prohibited under penalty. No less unjustly does the Government of Nicaragua seek to qualify this insistence on treaty claims as a continued exercise of the relinquished protectorate, and on that ground wish to declare England's interposition inadmissible.

Finally, the Government of the Republic of Nicaragua also expresses the desire (Réponse, p. 17) that the award should declare that the Treaty of Nicaragua [Managua], as having accomplished its purpose, is annulled in respect of Mosquitia, and that in future the parties concerned are bound in this respect to comply solely with the decisions adopted and enumerated in the award. This desire militates against universal principles of law, and therefore can not be acceded to. The interpretation of a treaty can never supersede the

treaty interpreted, and the judicial decision creates no new right, but only affirms and establishes the existing right.

Given under our hands at Ottawa, in the province of Ontario, this 3d day of August 1878.

ROBT. A. HARRISON.
EDWARD THORNTON.
F. KINCKS.

Signed in presence of:
THOMAS HODGINS.
E. MONK.