CHAPTER XV.

POLITICAL QUESTIONS.—NO. II. THE CLAYTON-BULWER TREATY, FROM 1850 TO 1860.

England controlled the termini of the proposed canal through Nicaragua.—American convention (Hise's) with the latter.—Excitement against England.—Sir H. L. Bulwer negotiates a treaty with Mr. Clayton.—Reservations.—Misunderstanding: Americans lack proper care.—Opposition to the treaty.—Secretaries Marcy and Cass against the English interpretation.—England, annoyed at the source of trouble, is for a time ready to revoke the treaty.—She makes arrangements with Central America.—After breaking the treaty, she revives it by giving up protectorates and possessions.—The United States Government declares itself satisfied.

We have shown what has been the true American policy with regard to a joint guarantee of a canal, and in fact to any settlement by European Powers in the close proximity of the United States. But it was only when California was acquired by the American Union that it looked into this question of control of the isthmus with any special interest.

Since the eighteenth century England has made efforts to have a footing in Nicaragua, because it was thought to offer the easiest means of communication between the two oceans. We do not attempt to give a history of those efforts. For our purpose it is enough to say that in 1848, when California assumed the importance attached to a part of the United States territory, and
therefore when the problem of a canal became a matter of close concern to the Union, England had certain claims on the territory of Nicaragua—claims which were utterly untenable in themselves, but which, whether tenable or not, were most disagreeable to the Government of the United States and offensive to its people. England not only occupied the points thought to be the best termini for the supposed canal, but threatened others.

It was under these circumstances that Mr. Elijah Hisc, United States Minister to Nicaragua, signed, on June 21, 1849, a "special convention having in view the grand design of opening and establishing through the territories of the latter State a passage and communication between the Caribbean Sea and the Pacific Ocean."

The treaty confers upon the United States, or "to a company of the citizens thereof," the exclusive right to construct and exploit a canal through Nicaragua, whose Government cedes absolutely all the land that may be required for it or for its dependencies. The articles referring to the neutrality of the canal are the following:

"Art. V.—The Government of the United States shall have the right to erect such forts and fortifications at the ends and along the lines of said works, and to arm and occupy the same in such manner and with as many troops as may be deemed necessary by the said Government for the protection and defence thereof, and also for the preservation of the peace and neutrality of the territories of Nicaragua, to whom pertains equal rights as inherent to her sovereignty.

"Art. VI.—The public armed vessels, letters of marque, and privateers, and the private merchant and trading vessels belonging either to the Governments or the subjects or citizens of nations, kingdoms, or countries
with which either of the contracting parties may be at
war, shall not, during the continuance of such war, be
suffered or allowed to come in the ports at the termina-
tions of said canals, nor be allowed to pass on or through
the same, on any account whatever; neither shall the
vessels of neutral nations, whether public or private, be
allowed to convey by means of said canal articles con-
traband of war, to or for the enemies of either of the
contracting parties, or to or for other nations or states
who may be at war with each other; nor shall the vessels
of countries which are engaged in war with each other,
owned or employed and armed by them to carry on such
war, during its continuance be allowed to pass through the
said canals. The public and private vessels of all nations,
kings, and countries which are at peace with both the
contracting parties and with each other, shall be permitted
to enter said ports, and to pass or be conveyed through
the said canals, but they shall be subject, however, to the
payment of such duties, charges, and tolls as may be estab-
lished by the proprietors of the said works."

It is, moreover, provided that Nicaragua cedes two
square leagues of land at each terminus of the canal for
sites of two free cities, to be, "of course, under the
qualified dominion" of Nicaragua, "not to be exercised
in violation of their rights and immunities as herein
specified."

In consideration of these favours the United States
agree to protect and defend Nicaragua in her dominions
and sovereignty, the former Government even employing
military forces, if necessary, to preserve the peace and
neutrality of Nicaragua, provided that no hostility shall
first be commenced by Nicaragua without the consent of
the Nicaragua and the United States Governments, given
according to their constitutions.

This "Hise convention" was never submitted to the
United States Senate. It found its way into the Ameri-
can press, and the public applauded it heartily; but General Taylor and his Secretary of State, Mr. Clayton, did not approve of some of its provisions, principally that for the protection of and alliance with Nicaragua, and also that Article which gives to the United States authority to create two free cities. Then, as Great Britain at that time claimed authority over the mouth of the San Juan River, which was deemed indispensable for the canal, as proposed, the treaty virtually brought Great Britain into collision with the United States. The President wanted to avoid that collision (which otherwise was popular in the United States), and at the same time he wanted to have the canal built, and as there was no money to be had in America, he wished to have the work undertaken with the goodwill of the British Government, so that British investors should embark in it.

In the meantime, on August 27, also of 1849, Nicaragua granted to an American company, named "The American Atlantic and Pacific Ship Canal Company," the privilege of building the canal, the concession being somewhat different from the Hise convention, but still containing its general features. The company was composed of Cornelius Vanderbilt, Joseph L. White, Nathaniel H. Wolfe, and others, all of whom were Americans.

On September 15, three months after the conclusion of the Hise treaty, Mr. Crampton, British Minister at Washington, giving an account of the views of the President and of Mr. Clayton, wrote to Lord Palmerston that the Government of the United States was in an embarrassing position; it had a majority in the Senate, and the general opinion in America was adverse to the claim of Great Britain's protegé, the Mosquito King, to
any part of the territory of Nicaragua. "You can form an idea," Mr. Clayton is reported as saying, "of the eagerness with which the party opposed to the Government will avail themselves of the opportunity of either forcing us into collision with Great Britain on this subject, or of making it appear that we have abandoned, through pusillanimity, great and splendid advantages fairly secured to the country by the treaty."

A few days later on Mr. Crampton reports another conversation, held at greater length, with the American Secretary. Mr. Clayton is reported as stating that what his Government desired was not to secure, as the His treaty did, any exclusive advantages to the United States with regard to the proposed canal, but that Great Britain should make a treaty with Nicaragua, by which no exclusive advantage should be secured to any party, and that Great Britain should "consent to make arrangements with regard to the Mosquito claim as would prevent its being an obstacle to the design in question"—that of building a canal. If that were not done, the situation in America would be embarrassing. The Hiso treaty was no secret. "The universal feeling would be for its adoption; and a reason for clamouring for its instant ratification would be that this might defeat what would be represented and believed to be a plan on the part of Great Britain to secure for herself a monopoly of the most eligible passage between the two oceans." Said Mr. Crampton further on: "Mr. Clayton considered that this question could never be settled amicably unless both Great Britain and the United States withdrew all claim to the territory of Nicaragua and Costa Rica."

Sir Henry L. Bulwer arrived in Washington, as British envoy, in the latter part of 1849. One of his first
despatches to Lord Palmerston is dated January 6, 1850. He says that the great interest of the Americans in the Mosquito claim is derived from the fact that the proposed canal is expected to pass through the Lake of Nicaragua and the River San Juan. He therefore proposes to consider the expediency of a convention between the United States and Great Britain “having for its object to facilitate the construction of the desired passage between the Atlantic and the Pacific.”

On February 3, Sir Henry Bulwer, writing again to the Foreign Office, enclosed the project of a convention respecting the Isthmus Canal, and in order to make clear its spirit and intention, stated his own views on the questions which it was proposed to settle. Rail or water communication, he said, by Central America, from ocean to ocean, would always have been of great interest to the United States, but since the possession of California and Oregon “it is now almost a matter of necessity.” Now, it was supposed in America that “Great Britain had placed the Mosquitos in possession of Greytown expressly in order to get hold of this entrance to the canal passage for itself, and at all events to prevent its falling into the possession or being subservient to the views of any other Power. On this ground has arisen all the excitement here touching the British protectorate of Mosquito.”

In view of the case Sir Henry thought that “all that seemed to be required in order to bring Great Britain and the United States to a perfect understanding is, that both should abandon every particular advantage—the one such as might be derived from the protectorate over the Mosquitos, and the other such as might be derived from any contract or treaty with Nicaragua, ... and dropping as a point of controversy those disputes as to the Nicaragua
and the Mosquito territory on which it is next to impossible that they should come to any agreement."

The British Minister further explains that there are stipulations which extend further than the mere engagement to use the best efforts to secure the free transit of the River San Juan, inasmuch as Great Britain agrees not to occupy or colonize any part of Central America; but in consenting to that provision Sir Henry Bulwer says he knew he was merely carrying out the views of the British Government.

Lord Palmerston, on March 8, entirely approved of the course of Sir Henry, and authorized him to sign the proposed convention; and on April 10 the since celebrated Clayton-Bulwer treaty was signed in Washington.

The preamble states that the two countries were desirous of "setting forth and fixing in a convention their views and intentions with reference to any means of communication by ship canal which may be constructed between the Atlantic and Pacific oceans by the way of the River San Juan de Nicaragua and either or both of the Lakes of Nicaragua or Managua."

The two Governments agree in Art. 1, that neither the one nor the other will ever obtain for itself any exclusive control over the said ship canal, or erect and maintain fortifications in its vicinity, "or occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords or may afford . . . . for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, . . . . nor will . . . . take advantage of any intimacy or
use any alliance, connection, or influence that either may possess with any State or Government through whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages, in regard to commerce or navigation through the said canal, which shall not be offered on the same terms to the citizens or subjects of the other."

Several provisions follow about the facilitating of the construction of the *said canal*. Then, by Art. V. both parties engage to protect the said canal from interruption, seizure, or unjust confiscation, and will guarantee its neutrality; this protection and guarantee being granted conditionally upon the persons controlling the management not making unfair discriminations in favour of the commerce of one of the contracting parties.

By Art. VI. the two Governments engage to invite the other friendly Powers to enter into similar treaties to this. And they likewise agree to enter into stipulations with such of the Central American States as they may deem advisable for the purpose of maintaining the neutrality of the canal and protecting it on equal terms for all nations.

By Art. VII. the contracting parties promise support and encouragement to such persons or company as should already have contracted for the construction of such canal. (The American Atlantic and Pacific Company had that contract.)

Art. VIII. cannot be well understood in view of the fact, that the treaty of 1846-8, between Colombia (then New Grenada) and the United States, to which we referred in our previous chapter, was then in force, and is in force to this day. It says:—"The Governments of the United States and Great Britain having
not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama. In granting, however, their joint protection to any such canals or railways as are by this article specified, it is always understood by the United States and Great Britain that the parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid Governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other State which is willing to grant thereto such protection as the United States and Great Britain engage to afford."

Now, on June 29, 1853, prior to the exchange of the ratifications of the treaty, Sir Henry Bulwer made a declaration to the effect that "Her Majesty does not understand the engagements of that convention to apply to Her Majesty's settlements at Honduras or to its dependencies." And Mr. Clayton on July 5 said that he "understood British Honduras was not embraced in the treaty."

These declarations were never submitted to the American Senate, and therefore are not to be considered as part of the treaty, having never been ratified.

Such were the provisions of the Clayton-Bulwer con-
vention of April 19, 1850, which we consider one of the most brilliant triumphs of Lord Palmerston. England, indeed, yielded absolutely nothing. What the Americans wanted was that England should withdraw the Mosquito claim to any portion of Nicaragua—a claim, indeed, which was absurd, as Mr. Lawrence, United States Minister in London, demonstrated most fully in a dispatch to his Government, bearing the same date as that in which his unpopular Government was signing in Washington the convention with Sir Henry Bulwer. Mr. Lawrence's dispatch is an exhaustive dissertation, in which he shows historically that the Mosquitos were not an independent nation, and that therefore all acts done by them are null and void. The British protection over the so-called "King" of those Indians was the cause of what Sir Henry described as "excitement," and Mr. Clayton wanted Great Britain to withdraw all claim to the territory of Nicaragua. Sir Henry Bulwer had the happy idea of meeting the views of the indolent (to say the least) American Secretary by displacing the question. He said: "You wish to have the canal built, and have got a company with a concession, and you wish England to withdraw from Nicaragua. England will not withdraw, but promises not to use her influence with the Mosquito King to embarrass you, promises to protect the canal, and furthermore promises not to occupy, fortify, or colonize Nicaragua, or even the Mosquito coast."

Mr. Clayton yielded easily. The wording of Art. 1. is rather ambiguous. England would not exercise any dominion in the Mosquito coast, but at the same time England promises that she will not "make use of any protection which either affords or may afford" to bring about that dominion; fortification, or colonization. There
is not the least doubt that the treaty recognizes that one or both of the contracting parties at the time afforded, and might still afford, protection "to any State or people," for the purposes aforesaid. It was the clear intention of Sir Henry Bulwer that the Mosquito protectorate should continue, of course under certain reservations as specified. In his note to Lord Palmerston, dated February 3, 1850, explaining the intent of the convention, as already quoted, he stated that the understanding was, that Great Britain should abandon every particular advantage, "such as might be derived from the protectorate over the Mosquitos," and dropping the disputes about such protectorate on which it was next to impossible that Great Britain and the United States should ever agree; and he added that the purpose of the proposed convention was "to exclude all question of the disputes between Nicaragua and the Mosquitos, but to settle, in fact, all that it was essential to settle with regard to those disputes, as far as the ship communications . . . . were concerned."

On April 24, a week after the conclusion of the convention, Sir Henry Bulwer, after giving an account of some slight differences, says that he embodied in the treaty the substance of the declaration given by Lord Palmerston to Mr. Lawrence on November 13, 1849, viz.: "that the British Government has no intention to make use of the protection which Great Britain affords to the people of Mosquito for the purpose of doing, under the cover of that protection, any of the things the intention to do which is disclaimed." (See Lord Palmerston to Sir Henry Bulwer, March 8, 1850.) Sir Henry says therefore, that "as the case now stands it is clearly understood that Her Majesty's Government holds its own opinions, already expressed, as to Mosquito;" and he adds: "I need not say that should your lordship wish to make any
further statement as to the views of Her Majesty's Government with respect to the protectorate of Mosquito, that statement can still be made: nothing in the present convention is affirmed thereupon, but nothing is abandoned."

Nothing indeed was abandoned. The purpose of the able diplomatist was to cause the Americans to give up the substantial convention arranged by Hise, and to quiet the "excitement" about Mosquito, not by abandoning the protectorate, but by the promise that it would not be used so as to put obstacles in the way of the construction of a canal.

It seems almost incredible that the Senate should have been satisfied with the terms of the treaty. How could Great Britain continue a protectorate and at the same time engage from ever fortifying the Mosquito coast? A protectorate was exactly that thing to which the people of the United States objected, and yet nothing was given up by Great Britain in that respect. It may be said that what Sir Henry Bulwer wrote to Lord Palmerston is not of consequence; but the first article of the treaty is very clear in not deciding anything about the protectorate, and, on the contrary, in affirming that such protectorate might continue. At any rate, the Clayton-Bulwer convention appeased for some time the agitation in the United States. Colonel Childs was commissioned to make surveys in Nicaragua, and his plans having been approved of by an American commission of army engineers, were submitted to English engineers, although that had no effect on the public, for the "American Atlantic and Pacific Company" was unable to raise the money.

But the good understanding between Great Britain and the United States was not to last long, as might be
expected. Lord Palmerston had been gaining a too easy victory through his cleverness and that of his special envoy. The ratification of the treaty was certainly due to a misunderstanding of the intents of the former Power—a misunderstanding that does not speak well for the watchfulness of the Americans of that period.

Two years after the ratification, Mr. Webster, Secretary of State, agreed with the British Minister, Mr. Crampton, upon a proposal to Costa Rica and Nicaragua for the adjustment of their disputes, as well as for the settlement of the controversy between Great Britain and Nicaragua in regard to the territory claimed by the Mosquitos, who were to give up Greytown to Nicaragua. That instrument does not refer to the protection afforded by Great Britain, and only to claims between the Mosquitos and Nicaragua; but the joint negotiations with Nicaragua failed, and nobody who appreciates patriotism can blame Nicaragua for it.

A great discussion was raised soon afterwards about the "declarations" of Sir Henry Bulwer and of Mr. Clayton, and the whole subject was reopened. In December 1853, the American Secretary of State, Mr. Marcy, instructed the Minister to Central America, Mr. Bosland, to take the treaty as "meaning what the American negotiator intended when he entered into it, and what the Senate must have understood it to mean when it was ratified"—viz., that by it Great Britain came under engagement to the United States to recede from her asserted protectorate of the Mosquito Indians, or to cease to exercise dominion or control in any part of Central America. If she had any colonial possessions therein at the date of the treaty, she was bound to abandon them, and equally bound to abstain from colonial acquisitions in that region.
Referring to the object of the "declaration" of Sir Henry Bulwer—i.e., the settlement of Belize or British Honduras—Lord Clarendon, on May 2, 1854, made a statement to Mr. Buchanan, the American Minister in London. He says that that settlement is not properly in "Central America," or in the territory of the former republic of that name, and now forming five distinct governments. This declaration was made in order to avoid misconception. The Belize here alluded to is the settlement of Belize as established in 1850, and where in 1847 the United States had sent a consul, who received the British exequatur, the United States thus recognizing the sovereignty of the latter; not the Belize of 1786, as Mr. Buchanan seemed to imply.

Between 1854 and 1856 Nicaragua annulled the charter of the "Atlantic and Pacific Ship Canal Company," and Great Britain concluded a treaty with Honduras for the protection and neutrality of any means of communication through its territory from ocean to ocean.

In 1857, on May 6, Lord Napier, British Minister in Washington, wrote to Lord Clarendon, that "the President denounced the Clayton-Bulwer treaty as one which had been fraught with misunderstanding and mischief from the beginning. It was concluded under the most opposite constructions by the contracting parties. If the Senate had imagined that it could obtain the interpretation placed upon it by Great Britain, it would not have passed. If he had been in the Senate at the time, that treaty never would have been sanctioned."

Of course, there is abundant historical proof that there was a misapprehension on the side of the Americans as to the construction of the stipulations. But the fault was their own. They did not pay proper attention to the treaty, and they meant what was not specified in it,
directly or indirectly. They had only to thank themselves for the misunderstanding.

General Cass, Secretary of State, wrote to Lord Napier on May 29 of the same year, and, referring to these different constructions, goes so far as to say that, had the British interpretation been made clear, no President and no Senate would have ratified it. But General Cass does not show it. He and his predecessors and successors speak of what must have been the feeling of their country, but not of what the treaty itself clearly says.

General Cass is stronger in his contention about the Bay Islands, Honduras, which were formally annexed to Great Britain on July 17, 1852 (two years after the conclusion of the Clayton-Bulwer treaty), by the following proclamation:

"Office of the Colonial Secretary,
"Belize, July 17, 1852.

"This is to give notice, that Her Most Gracious Majesty the Queen has been pleased to constitute and make the islands of Roatan, Bonacca, Utiilla, Barbarat, Helene and Morat to be known and designated as a colony of the Bay Islands.

"Augustus Frederick Gore,
"Colonial Secretary.

"God save the Queen."

That was, said General Cass, and always has been considered, "a violation of the treaty" of 1850, "even under the British construction of it."

On June 22, also of 1857, Lord Napier writes again to Lord Clarendon, that "an attempt will be made in the next session of Congress to set aside the Clayton-Bulwer treaty. . . . There can be no doubt of the views of the President and Cabinet on this matter."
Four months later, General Cass, acknowledging a communication from Lord Napier concerning the relations between Nicaragua and Costa Rica, hoping that those two countries may enjoy prolonged peace, and referring to the Clayton-Bulwer treaty as contemplating harmony, reminds Lord Napier that that treaty did not heal the differences between the two countries. Those differences, he says, "still remain unsettled, while the treaty itself has become the subject of new and embarrassing complications."

Indeed, Lord Napier, writing soon afterwards to Lord Clarendon (October 22, 1857), stated that he had heard the President say that "that treaty had never been acceptable to the people of the United States, and would not have obtained a vote in the Senate had the least suspicion existed of the sense in which it was to be construed."

In his message to Congress in December 1857, the President (Mr. Buchanan, ex-Minister to England) devoted much space to this subject, stating what the United States believed to be the position of Great Britain when the treaty of 1850 was ratified. That Power, he says, contends that the treaty does no more than simply prohibit them from extending their Central American possessions beyond what they were at that time.

"The universal conviction," says the President, "when our Government consented to violate its traditional and time-honoured policy . . . was that the consideration for this sacrifice was that Great Britain, in this respect at least, should be placed in the same position as ourselves."

Buchanan adds that the British colonization of Honduras was "in direct opposition and meaning of the Clayton and Bulwer treaty." Even as late as 1856, when on August 27 Great Britain proposed a convention
to Honduras, by which she "cedes" to the latter the Bay Islands—"a free territory under the sovereignty of the Republic of Honduras"—it deprived Honduras of rights without which sovereignty scarcely exists.

The question remained open, and on March 22, 1858, Lord Napier, communicating to Lord Malmesbury what was being done with regard to the different ways of settling pending controversies in Central America, said that "these modes both involve the maintenance of the Clayton-Bulwer treaty in its essential principle—viz., the neutrality of the Central American region"—and the exclusion of both parties from territorial acquisitions there. Lord Napier adds that the British Government, "prompted by an impression, derived from many sources, that the obligations of the Clayton-Bulwer treaty were repugnant to the people of the United States, . . . authorized me to inform General Cass that Her Majesty's Government would not decline the consideration of a proposal for the abrogation of the treaty by mutual concert." Furthermore, says the Minister, "I had no information of the intentions of Her Majesty's Government beyond the bare fact that they would entertain a proposal to cancel the engagement of 1850. . . . In reply to my observations, the Secretary of State remarked that he would reserve the subject. . . . He added, as a personal impression, that he was in favour of a naked unqualified repeal of the Clayton-Bulwer treaty without conditions."

Lord Malmesbury, writing to Lord Napier on April 8, 1858, admits that "the Clayton-Bulwer treaty has been a source of unceasing embarrassment to this country." On July 25 Mr. Cass sent a long memorandum to Mr. Lamar, reviewing the whole dispute in a very lucid manner. In December, Lord Malmesbury, referring to
the note, speaks of "the accuracy with which General Cass has recapitulated the circumstances under which the controversy has been sustained."

But the abrogation of the treaty was not really palatable to England; she therefore resolved upon adhering to the American interpretation of it by means of arrangements made with the several Central American Governments to whose territory England had, directly or indirectly, any claim.

In April and November 1859, and January 1860, Great Britain concluded treaties with Guatemala, Honduras, and Nicaragua respectively, for regulating the questions pending with them; among other things providing for the cessation of the protectorate over the Mosquitos three months after the ratification of the treaty.

These conventions gave satisfaction to the United States Government; and on December 3, President Buchanan, announcing their conclusion, said that "the discordant constructions of the Clayton and Bulwer treaty . . . have resulted in a final settlement entirely satisfactory to this Government."

That seemed to terminate the first period of discussion of the celebrated convention which, during the first ten years, had given rise to so much irritation.