The Undersigned, His Britannic Majesty's Charge' d' Affaires has had the honor to receive the Note of His Excellency Señr Francisco Carneiro de Campos, Minister and Secretary of State for foreign Affairs dated 15th. Instant.-

The Undersigned has perused with due attention the arguments adduced by His Exy. in support of the present demand of the Brazilian Commissioners for other documentary proofs, but he cannot perceive any well-founded reason to relinquish the opinion, which he he formed, in the first instance, of its impropriety and unreasonableness.-

The Undersigned has therefore to state to His Excellency, that he considers it to be his duty to withhold his assent to this demand on the part of the Brazilian Commissioners, inasmuch as it is obviously opposed to the spirit and to the letter of the stipulations of the Memorandum,

to

His Excellency
Señr Fco Carneiro de Campos
&c &c &c

to which the Commissioners are bound to
adhere, is inconsistent with, and subversive
of the previous engagements entered into
by the former Brazilian Commissioners,
which ought to be considered as conclusive,
and cannot be considered as founded
upon principles applicable to the proceedings
of the mixed Commission.

The questions which have arisen
either with respect to the interpretation of the
Articles of the Memorandum, or to the
supposed deficiency of documentary proofs,
have formed the subject of so detailed and
protracted a correspondence with the
Brazilian Government; - they have been so
diffusely discussed by the Commissioners,
and have so fully elicited the opinion of
His Majesty's Government upon these subjects,
that the Undersigned might, with reason,

consider

consider it sufficient, in order satisfactorily to
refute the arguments now advanced in
favor of the pretensions of the Brazilian
Commissioners, to refer His Exy. to that
correspondence, and to the worded decisions
of the Commissioners. —

But, the sincere desire
entertained by H. M's Govt. (of which repeated
proofs have been given,) to leave no efforts
untried that may conduce to an
amicable arrangement of this long-pending
question, under the duty of the
Undersigned to exert every means in his
power calculated to facilitate so
desirable a result, and he therefore
enters into an examination of the
objections, which, notwithstanding former
arguments, have been now brought
forward by the Brazilian Commissioners,

in

in the hopes that he shall be enabled
to convince this Body of their unreasonableness.

The Undersigned has, in the
first place, to observe, that the
Brazilian Commissioners, in advocating the
propriety of their present demand, appear
to have entirely disregarded, or at least,
made themselves very imperfectly acquainted
with the provisions of that clause in the
Memorandum, which has reference to the
point at issue. In the 9th Article of that
Agreement, it is stated "that the indemnities
for the Cargoes generally shall be regulated
by the Invoices, Bills of Lading, Manifests
and other Documents, which may be
presented to the Commissioners, duly
attested by the Parties or their Agents."

The documents to be
presented are here distinctly enumerated,
and they are clearly expressed by whom the
attestation

attestation to render them valid, is to be made.
No other formality is exacted than this
attestation by the "Parties or their Agents."—
It follows, therefore, that when this stipulation
has been fulfilled, the documents have
received that conformation of their authenticity
required in the above Article, and must
necessarily be admitted as valid and
satisfactory.— The terms of this Article have
been strictly and scrupulously adhered to.—
The invoices, bills of Lading &c have, without
exception, been duly "attested by the Parties
or their agents" upon oath before the
competent authorities, and the attestations
of the bills of Lading have moreover been
corroborated by the Brazilian Consular
Agents in England.— More than this can
certainly not be demanded.—
If evidence upon oath is to
be counted upon mere suspicion, what
other

other species of proof, it may be asked,
can be considered as valid in cases,
as in the present, where the parties
themselves are prevented from giving
their personal testimony." The Brazilian
commissioners have no right to give an
interpretation to an article which is
clearly not borne out either by the
wording or the tenor of it. — If it be
contemplated to depart from the terms
of the Memorandum, or to seek, by captious
objections, to pervert the true meaning
of the provisions therein contained, the
Undersigned has only to remark, that this
high time that H. M.'s Govt should be
informed thereof in order that
In the next place, the
Present demand of the Brazilian commissioners
is

is a direct infringement of the arrangement concluded with their predecessors in 1889. which had especially for object to prevent any future misunderstanding upon this subject of the documentary evidence to be produced. — By the additional Article signed by the Commissioners (a copy of which was inclosed in the Undersigned's note of the 22th October) it was agreed that in the absence of one of the original Bills of Lading, or even of a copy, or should any other document be wanting, the settlement of a claim should not, upon that account, be impeded, provided the other proofs corroborated its validity. These proofs are to be found amongst the documents in support of each particular claim, and are as follows: —

follow: —

1st The Invoices, sworn to, and

which confirm the statements contained

in the bills of lading, in all their details.

2dly The manifests, cockets, or

Custom-House clearances, descriptive of

the Cargoes, and attached to the acts

(autos) of the executive Process.

3dly The original Bills of lading

on board the Vessels at the time of

their capture, which have ever since

been in the possession of the Brazilian

Authorities, and with which the Bills

of Lading presented to the Commissioners

can be compared.

4thly Reference can be had to

the Lists of the Cargoes made out by the

Captors, at the Ports at which they were

discharged. —

I can surely therefore

not

not be contended that ample confirmatory proof does not exist to substantiate the claims.- By the terms of the before-mentioned additional Article, were no bills of Lading forthcoming, the Brazilian Commissioners would not be justified in rejecting the examination of, much less found upon this omission (which it has been shewn, it was agreed should not be considered an insuperable Article) a right to invalidate the claim.-

The Undersigned cannot suppose that the present Commissioners do not hold themselves bound by the acts and decisions of their predecessors.- If these Gentlemen consider themselves absolved from all previous engagements, it is clear that no hopes can be entertained

of

of making any progress towards a definitive settlement inasmuch as a precedent would thereby be established according to which, in the event of other Brazilian Commissioners being appointed, all preceding acts and agreements would be rendered null and void. —

The Undersigned considers however the decisions of the Commissioners recorded in the minutes of their proceedings, to be equally obligatory, as the terms and stipulations of the Memorandum. —

It has been assumed that, in legislating the claims, the Commissioners might properly be guided by the practice of the courts of Law in England, with regard to British subjects, and that as stamped Bills

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of Lading are required to be presented
before a British Tribunal, the same
course should therefore be rigidly
followed by the Commissioners.—
In this argument the Underwriters
replies, that the technical legal
formalities observed by the British
Courts, and which may be binding
upon British subjects in their own
country, cannot be deemed as also
applicable to the proceedings of the
said Commission.
That Commission was
established in pursuance of a Special
Agreement concluded with the
Brazilian Govt., containing
conditions, which were intended and
understood to form the rules by
which

which alone the Commissioners were
to be guided in adjusting the
claims. — It does not appertain
to the Commissioners to exact an
observance of all the forms of a
Court of Law. Their duty and
authority extend only to investigate and
ascertain whether the documents
presented to them, confirm, according
to the general and well-known
usages of British Commerce, the
validity of the claims Submitted
to their arbitration. Whether, in fact,
the claims are fairly substantiated
by corroborative Evidence; and,
when this is effected, it is neither
reasonable nor just to insist upon
the

the production of these documents, or the
fulfilment of formalities, which can no longer
be essential to establish the justice of the demand.—
His Excellency attaches considerable importance
to the circumstance, that in some instances the
proofs in support of the claims are accompanied
by the stamped Bills of Lading, and H.E. contends
therefore, that these documents might, and
consequently ought to have been transmitted
in all cases, and that where this omission
exists, a want of good faith is implied.

From this view of the question, it
would seem that the practice invariably
followed by British Merchants, in exporting
goods from Great Britain to foreign countries,
has not been properly explained to H.E. &c.—
Upon the completion of a cargo,
several sets of bills of lading are prepared,
A duty is imposed upon these papers which is
anticipated to have been paid by one duly
stamped.—

The

The master of the Vessel receives one of these
bills of Lading, unstamped, and another is
forwarded to the Merchant From whom the
Merchandize is consigned. These documents
in all commercial transactions are admitted
as valid; are frequently negotiable, and
the Undersigned can confidently state, have
hitherto always been recognized by the
Brazilian Authorities. These does, as
authentick proofs of property.

The reason why the whole of
the claims are not accompanied by the
stamped Bills of Lading, is in consequence
of the Parties interested in those cases
having become involved in litigation, and
these documents being required for the
prosecution of the Law suits, and in order
to prove that the stamps have not been
evaded

evaded, have been placed in Court, until
further steps shall have been pronounced.

The demand of the Guardian
Commissioners could not therefore, under
any circumstances, be complied with.

But the unreasonableness of
requiring the Stamped Bill of Lading, is
here still more apparent as regards the
claim of the Henry and Isabella. This
Vessel was built at Guernsey, and belongs
to a British Merchant established there.
Now it is notorious that the
Stamp duties are not levied in the Islands
of Guernsey Jersey &c. The Merchants therefore
being exempt from the payment of this tax,
a stamped Bill of Lading for the Cargoes
of Vessels belonging to those Islands does not
exist

exist. This fact alone would suffice to
shew the inconsistency of the conduct of
the Brazilian Commissioners, and how
imperfectly they are acquainted with the
commercial customs and privileges of the
subjects of Great Britain, and with that
very practice to which they have so
confidently appealed. —

For the reasons therefore stated
in this Note, the Undersigned must formally
protest against the demand now brought
forward by the Brazilian Commissioners. —
The Undersigned trusts His Excellency will perceive
the justice and propriety of taking the subject again
into his consideration. But it is incumbent upon
the Undersigned to remind His Excellency of
the circumstances under which the
Undersigned was directed by His Majesty's
Government

Government to abstain from making to His
Excellency the declaration of the determination
of His Majesty's Government contained in
his Instructions received in March last.

His Majesty's Govt, relying upon
the solemn assurances made to them by the
Marquis of Santo Amaro, in the name of the
Brazilian Government, of the sincere intention
of that Govt to bring the Question of the claims
to a prompt and equitable termination, and,
to use all reasonable exertions upon all occasions to evince their desire
to maintain the closest relations of
friendship with Brazil, so far as this possible
to do, without departing from the indispensable
duty which they have to perform the painful
the rights and interests of His Majesty's subjects,—
willingly complied with the urgent request of
the Brazilian Ambassador to suspend that
declaration

declaration.- The undersigned, however
must not disguise from His Excellency, that
should unfortunately the just expectations
of His Majesty's Government upon this subject
be again disappointed, he will, in that case,
be compelled to consider his former instructions
to be again in force.

In the mean time, and until
the Undersigned shall have received His
Excellency's reply to this representation, the
proceedings of the Commission may be
continued, and the Undersigned therefore has
the honor to request that His Excellency will
direct the Brazilian Commissioners to
resume the examination of the claim for
the "Henry and Isabella," which has been
before the Commission more than a year,

and

and which, as the Undersigned has
therein, cannot be objected to, even according to
the views of the Brazilian Commissioners.

The Undersigned will, on his
part, give similar directions to the
British Commissioners.-

The Undersigned has the
honor thereto to His Excellency Mr. Ellis
occasion, the assurances of his high

consideration and esteem.

Authur Aston

Rio de Janeiro
20th November 1831

2ª de Novembro 1931
e 17 de Dezembro 1931