



Villa Trocadero,  
Arcachon April 10, 1899.

Monday p.m.

My dear Martinsen:

I enclose herewith, a first step taken by M. Breton

I protested against the violation of my domicile, secured by the Third Article of the Convention of February 23d, 1853 between France and the United States. (Consular Regulations page 566.) You will notice also on page 565, that "they may place, etc, and they shall be allowed to hoist the flag of their country thereon." Also following that, the provision when any declaration for judicial purpose, etc.

Please retain your avoue to act for me in this matter. Give him the enclosed papers. Let him clearly understand that the chief reason I rented the villa was to obtain the use of the bath-room; medicated baths having been prescribed for me and my physician having advised the renting of this villa for that purpose, as he will testify.

Upon the refusal of M. Breton after I entered the villa, to allow me the use of the bath room, although it was not exempted in the lease, nor by parole, by the guardian, nor by his agent, M. Ducos, I was compelled to have the baths necessary for my health brought in by an outside party at great expense--but with immense benefit to my health.

Please impress upon him that I stand ready to deposit the entire amount claimed to abide the decision of the court; and if he desires, take the money from the safe and give it to him for such deposit. I wish it clearly understood that I am not only willing, but anxious to obey the laws of France and if the tribunals of the republic decide that I must pay rent for property I have not been permitted to use or enjoy, I shall do so instantly and without murmur.

Call the avoue's attention to the fact that the process is directed against me as "Consul of the United States;" that I protest against the violation of my domicile as such Consul; forbade the chief of police to enter and was thrust aside by him and those accompanying him; that I forbade all action on their part, demanding only judgment by the tribunal on the landlord's right to demand payment for what he had not furnished.

I enclose the papers in the case--except the lease, which as I do not find with the others, think you did not return--perhaps left with the avoue.

I do not believe any such course would have been adopted by M. Breton if I had been a citizen of the Republic of France, and as the government of the United States is expending seven millions and a half of francs to make the Exposition of 1900 at Paris, a success and as it is openly proclaimed in the journals of the day that more profit is expected to be made from American visitors than all others combined, I think this is a good time to determine definitely, whether American citizens are to be protected by French courts or not; whether a French police officer can point to the Consular flag as one of the deputies of the commissioner of the police did to-day and say "Nous ne respectons pas ce drapeau-la!" It will be a matter of some importance for the thousands of American citizens who will come to Paris next year, and the hundreds who are contemplating now, coming to Arcachon, mainly through my efforts, to know whether they can enjoy what they rent and pay for, or must pay for the whole of a villa and occupy but part of without any reservation being made.

Please make these things as plain as you can to the avoué, and pay him what he asks, to take the case.

I have protested in writing to the Commissioner of Police against the violation of my domicile and violence to my person. I wish you to make the same complaint to the Prefet. I am determined to make this matter a test of the right--not merely of Consuls--but of American citizens in France. I want it understood by the tribunal, the Prefet, and everybody else, that I have no desire to avoid paying the rent, but only desire to be allowed to occupy what I pay for, and recover such damages as the court may decide that I ought to have for denial of such right. I bow always to the law--that is the teaching of my country and my profession--but I will not submit to extortion at the hands of any private person who sees fit to disavow his contract.

Sincerely yours,

Albion W. Tourgee

# MEMORANDUM.

3--They are authorized especially to "place the arms of their nation" and "hoist the flag of their country" on the "outer door of their offices OR dwellingshouses." Such grant of right of course, implies that

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the "offices OR dwelling-houses," so distinguished shall be exempt from violation by local authorities and that such flag shall be respected by all police and executive officials.

4--They are specially exempted even from judicial summons and must be ~~requested~~ "invited in writing" to appear in court or "their ~~residence~~ evidence requested in writing or taken orally at their dwellings."

5--It is especially provided that "the consular offices AND dwellings" shall be inviolable. The local authorities shall not invade them UNDER ANY PRETEXT."

6--It is also specially provided that the local authorities "shall in NO CASE EXAMINE or seize" any books or papers "deposited in the consular offices OR dwellings."

7--It is provided that such consular officers shall in both countries "have the right to complain to the authorities, whether federal or local judicial or executive, throughout the extent of their consular districts of any infraction of the treaties or conventions existing between the United States and France." In pursuance of this guaranteed right, I make formal complaint: (a) That the issue of a writ commanding the seizure of is a violation of treaty rights. (b) That the invasion of goods in the consular dwelling ~~by a huissier of your tribunal against~~ my dwelling by a huissier of your tribunal against my protest and the exercise of violence against my person was a very grave violation of treaty rights. (c) That the declaration of said huissier when refused entrance to my dwelling-house, with a gesture of contempt toward the consular flag, displayed over the outer door, "Nous ne respectons pas ce drapeau-la," was a public official insult to the flag of my country and a most grave infraction of treaty-rights. (d) That the examination of "books and papers deposited" ~~in said consular dwelling~~ in said consular dwelling, by said

huissier after having secured entrance by force, was a grave official infraction of treaty rights. Against each and all of these acts, I hereby complain and protest.

8--The treaty declares inviolable both "the offices" and "the dwellings" of consuls in both countries. These are not necessarily nor usually in the same building, often not in the same city. The consul of the United States at Bordeaux is required to have an "office" in that city, ~~He is expected to have a residence, in or near said city also,~~ but he may have a "dwelling" or "dwelling-house" in any part of the Consular District to which he is accredited. This District is declared in my exequatur to embrace the departments of (Name departments ) In any part of these, I have a right to exercise the functions of my office, to have a "dwelling" and to "hoist the flag of the country on the outer door" thereof in token of such occupancy. I had such "dwelling" at Arcachon, so distinguished, which I had occupied for several months, in which consular books were "deposited," where a seal of said consulate was kept and used and the main part of the business of said consulate was conducted. This "dwelling" was within my consular district, where I had a right to be and to exercise my official functions.

#### 9--"Dwellings and dwelling-house"

These two terms are somewhat unusual in American legal terminology. I have translated them "demeures" never having seen an official copy of the treaty in French. We have in American law, four terms each of which may be used to designate an abiding-place, to wit: Domicile, Residence, ~~Abode~~ Habitation and Dwelling or dwelling-house. Of these "dwelling" is the



least permanent and formal. A man can have but one legal domicile or residence; but he may have many "dwellings" or "dwelling-houses". The ~~selection~~ of this term for contrast with consular "offices," cannot have been unintentional, and affords, if anything more than such contrast with "offices", was needed, a perfect rebuttal of the idea that a particular "official residence" only was contemplated by the treaty. One can have but one "residence" or "domicile" and may have many dwellings" without change of "residence" or "domicile." ~~The~~ Consul of the United States has any such thing as an "official residence". His government provides him with an "office". He selects and provides his own "dwellings";. It is evident, therefore, that any house within his district where the Consul may choose to live with his family or with <sup>evidence</sup> ~~any assistance~~ of continuous occupation for any considerable time, becomes his "dwelling" or "dwelling-house" and is protected by existing treaties. The proces-verbal drawn up by the hussier, which describes me as "Consul des Etats-Unis dem demeurant actuellement à Arcachon" clearly shows that the villa into which he entered with violence -- vi et armis -- was recognized by him and by the terms of the writ he held, as my "dwelling" which is expressly made inviolable by existing treaties.

The citations above made are from the official text of the treaty of 1853 between the republics of France and the United States of America and applicable to the consular representatives of both.

Respectfully submitted to the President of the Tribunal of Premier Instance of Bordeaux.

*Toungie*  
Consul